

# Force Investigation Team

- Cleveland Division of Police
- June 9, 2021
- Superintendent Ronald B. Bakeman

## Course Goal

**To instruct and train members of the Cleveland Division of Police assigned to the Force Investigative Team (FIT) as to their roles, duties, and responsibilities in responding to Level 3 Uses of Force call-ups**



## Module 2

### Definitions of Levels of Resistance

- ⑩ Passive Resistance
- ⑩ Active Resistance
- ⑩ Aggressive Physical Resistance

# 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.

# 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 the officer who is using force in the lawful performance of their duties. Verbal statements alone do not constitute active resistance.



# 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 attempts to attack, does attack an officer, or exhibits combative behavior





# Definitions of Types of Uses of Force

See: GPO 2.01.05

CLEVELAND DIVISION OF  
POLICE



GENERAL POLICE  
ORDERS

## Reportable Use of Force

- Officers shall report to their supervisors ALL uses of force except de minimis force.
- What is de minimis force? It is physical interactions meant to guide and/or control a subject that do not constitute reportable force [e.g., use of control holds that do not cause pain and are not reasonably likely to cause pain, using hands or equipment to stop, push back, separate, or escort a person in a manner that does not cause pain, and is not reasonably like to cause any pain].



## 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, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 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 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

## Level 2 Use of Force



## 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; a neck hold; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on 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 officer; a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.

## Module 3

### Introduction to the Force Investigative Team (FIT)




# What is the purpose of the FIT?

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

1. The right of the public to a full, fair, and transparent investigation; and
2. Uses of force that are contrary to law or this Division's policy are identified;
3. Training, tactical and equipment deficiencies related to the use of force are identified; and
4. The investigations are timely, professional, thorough, comprehensive, objective, and bias free.



## **What is FIT called upon to investigate?**

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1. All Level 3 Uses of Force, with two notable exceptions;
  2. All Level 2 Uses of Force on a handcuffed individual;
  3. All Uses of Force involving potential criminal conduct by the Officer;
  4. All instances in which an individual died while in, or as an apparent result of being in CDP custody; and
  5. Any Uses of Force assigned to it by the Chief.

# Exceptions



**First, are all uses of deadly force by a CDP officer within the jurisdictional boundaries of the City of Cleveland that results in the actual or anticipated death of a suspect. The Cuyahoga County Sheriff will be contacted and responsible for conducting a timely, independent investigation and submit his findings to the appropriate prosecutor.**



**Second are all vehicle pursuits. Vehicle pursuits will be investigated by the Accident Investigation Unit.**



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

**First and most importantly, the FIT will be made up of highly competent and motivated personnel who have specialized training and expertise.**

## **Commander, Bureau of Special Investigations**

- **Commander Michael Connelly**
- **The Commander, and/or his designee, is responsible for initiating a FIT response and ensuring timely notification of all parties.**



# Superintendent, Internal Affairs

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





## **Lieutenant OIC Homicide/ Criminal FIT OIC**

- **Lieutenant Maurice Brown is the current OIC of Homicide.**
- **Lieutenant, OIC Homicide, and/or his designee is responsible for initiating the call-up of 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.**

## **Lieutenant OIC Internal Affairs/ Administrative FIT OIC**

- **Lieutenant Charles Neidbalson is the current OIC of Internal Affairs**
- **IA OIC, and/or his designee, is responsible for initiating the call-up of the members of Internal Affairs who are FIT assigned. Also responsible for contacting members of Inspections and OPS 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 the separation of the involved and witnessed officers and orchestrating asking the Preliminary 17 Garrity Questions by Internal Affairs Sergeants. The Administrative FIT OIC is responsible for assisting the Criminal FIT OIC in making sure that access to the scene is controlled.**

## **Select detectives assigned to the Homicide Unit**

They are responsible for and will conduct the criminal investigation unless the investigation is assigned to an outside agency.

## Select Sergeants assigned to the Internal Affairs Unit

They are responsible for conducting the administrative investigation, unless the involved officer is a member of an outside agency then that agency will conduct the administrative investigation. Where the involved officer is a member of an outside agency, the Internal Affairs sergeants will monitor the investigation conducted by Homicide.







# Selection

Not all members of Homicide and Internal Affairs will be members of the FIT



# Selection

- Selection to the FIT, whether from within Homicide, Internal Affairs, or those assigned to other Units will be based on training, experience, and expertise. Those Officers/Investigators selected to the FIT will possess integrity, and whose investigative experience reflects a high level of accuracy, and thoroughness.
- Each candidate for the FIT must create an application packet that contains samples of investigative work, names of past and current supervisors, and a resume that includes training and assignment history.

## Investigators from the Office of Professional Standards

- OPS Investigators, to be assigned to the FIT, must have a minimum of five [5] years of investigative experience and employed with OPS for at least one[1] year.
- OPS investigators will not participate in the criminal investigations.
- OPS investigators may assist 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.

# Crime Scene Unit



- The Crime Scene Unit, although not officially a member of the FIT, are to be notified for all FIT call-ups. Although CSU supervisors are on scene, the CSU detectives answer to and receive assignments from the Criminal FIT OIC.
- ❖ Exception: If the Cuyahoga County Sheriff is contacted to conduct the criminal investigation, their current practice is to contact the Ohio Bureau of Investigation [BCI].

## The Training Section

The Training Section 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.

# Staffing of a FIT Call-up



**The BSI Commander, in consultation with the IA Superintendent, is responsible for ensuring adequate staffing of the FIT . . .**



**Generally speaking, for all uses of deadly force, the entire FIT is called out**



**Generally speaking, all Level 2 uses of force on a handcuffed subject elevated to a Level 3 use of force, only members of Internal Affairs are called out.**







Factors  
considered in  
determining the  
number of FIT  
personnel  
required for the  
call out

The scene itself, is it self-contained or spread out, are there multiple scenes;

The number of civilian witnesses, and/or the area to be canvassed;

The number of involved officers and witness officers; and

Personnel needed at the hospital to conduct interviews.

## Module 4

How a FIT callout is initiated and the roles of the members of the FIT responding to the scene.



It all begins with the on-scene supervisor. Supervisors notified of a Level 3 Use of Force are required to immediately notify the Communications Control Section [CCS] of the: [a] nature; [b] location; and [c] time of the incident. The CCS notifies the BSI Commander.

# Notifications

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On Scene Supervisor



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CCS



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BSI Commander

# Options for the BSI Commander

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FIT callout is necessary: Commander gives instructions to the on-scene supervisor and contacts Lt. Pillow and Superintendent Bakeman

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Note: If an outside agency is needed, Commander contacts the outside agency.

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FIT callout is not necessary: Commander documents the facts and provides the same to the Superintendent. Gives instructions to the on scene supervisor.

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Additional information needed: Commander sends at least one FIT homicide detective to the scene to obtain additional facts. Detective[s] provides additional information to Commander and Commander and Superintendent discuss options.



Decision has  
been made  
for a FIT  
callout:

Duties of the  
on-scene  
supervisor

- Secure the scene.
- Separate involved officers from each other as well as the witness officers and instruct the officers not to talk.
- Officers are **not permitted** to review WCSs.
- Obtain a public safety statement.



## CLEVELAND DIVISION OF POLICE Public Safety Statement

Reference # \_\_\_\_\_

The Cleveland Division of Police is conducting an investigation into the above mentioned Level 3 Use of Force. Officers shall provide the following information to the first responding non-involved supervisor to a use of force requiring a FIT response:

1. A description of the scene that needs to be protected.
  - Location of unsecured weapons
2. Identification and location of involved parties/witnesses.
3. Description of suspects still at large
  - Direction of travel, how long ago
  - are the suspects armed
4. Direction of shots fired, if applicable.
5. Whether officer or anyone else is injured and their location.
6. The type of force used by the officer and threat presented by other involved parties.
7. Any information that would help ensure officer and public safety and assist in the apprehension of suspects.

Supervisor \_\_\_\_\_ Date \_\_\_\_\_

# Public Safety Statement Form

## Bifurcation of the FIT investigation



- The FIT investigators as they arrive on scene will be immediately bifurcated into two [2] separate investigative teams: [1] criminal, and [2] administrative.
- What is the significance of the fact that the FIT investigation is “bifurcated”? Discussion.

## Bifurcation of the FIT investigation



- FIT Criminal investigation team is headed by the Lt. OIC for Homicide.
- FIT Administrative investigative team headed by the Lt. OIC for Internal Affairs.
- The FIT Criminal and Administrative investigations will be conducted concurrently or parallel with each other.
- Discussion.
- Questions?



# Responsibilities:

## FIT Criminal OIC on scene

- Take control of the scene.
- Take control of the criminal investigation team, meet, and discuss investigative strategies.
- Ensure that enough personnel are on scene to conduct all the tasks of the criminal FIT investigative team.

# Responsibilities:

## FIT Criminal OIC on scene

- Make sure, if not already done, that all involved and witness officers are separated.
- Work with the Administrative FIT OIC to ensure no contamination of the criminal investigators with information developed during the administrative investigation.
- Ensure that EAU has been notified.

## Duties:

## Members of the Criminal FIT

- If there prior to either FIT OIC, make sure scene is secured and that involved and witness officers have been properly separated.
- Examine the subject for injuries, and inquire of any complaints of injury/pain. If a positive response, ensure the subject receives medical attention from an appropriate medical provider.
- Accompanied with FIT administrative members, conduct a canvass.
- Ensure all weapons and equipment in the possession of the involved officer[s] is treated as evidence.

## Duties:

## Members of the Criminal FIT

- Ensure photographs of involved and witness officer[s] are taken.
- Ensure scene sketch and photographing of the scene are taken.
- Ensure the collection and processing of all evidence is consistent with Homicide investigation protocols.
- Interview the subject [audio and video].



## Duties:

## Members of the Criminal FIT

- Collection of video, including privately owned, 911 Audio, MDT, and CDP radio traffic related to the incident.
- Respond to Medical Examiner's Office to witness autopsy.
- Provide a copy of the criminal investigation to the County Prosecutor's Office for review and potential Grand Jury determination.
- Any questions?



## Duties:

FIT Criminal OIC  
after the scene  
is cleared

Within 24 hours complete a preliminary report to be presented to the Police Chief, through BSI Commander and the Internal Affairs Superintendent.

Continue to ensure that the criminal investigation is not tainted by any compelled statements.

Ensure that information developed during the criminal investigation is reviewed and forwarded to the FIT administrative investigators as soon as practical.

Ensure that reasonable efforts are made to resolve material inconsistencies in the evidence.



## Duties:

FIT Criminal OIC  
after the scene  
is cleared

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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.

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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.

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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.

# What are the duties of the FIT Administrative OIC on scene?

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|         |                                                                                                                                             |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Consult | Consult with Criminal FIT OIC and assist in controlling the scene.                                                                          |
| Take    | Take control of the Administrative Investigative Team, meet and discuss investigative strategies.                                           |
| Ensure  | Ensure that enough Administrative investigators are present on scene to conduct all the tasks of the Administrative FIT investigative team. |
| Ensure  | Ensure that involved and witness officers have been located and separated.                                                                  |



## What are the duties of the FIT Administrative OIC on scene?

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Assign

Assign officer[s] to conduct the Preliminary Questioning [Garrity] of the involved officers and witness officers. Ensure that Garrity statements are not shared with members of the criminal investigative team.

Assign

Assign officers to assist/monitor the criminal investigators as a canvass the area for civilian witnesses.

Request

Shall request and conduct a scene walk through.

# What are the duties of the members of the Administrative FIT investigative team?

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1

Respond to the scene, and if there prior to any FIT OIC, ensure that involved and witness officers are all separated.

2

Conduct Garrity interviews of witness officer[s], and instruct them to complete a narrative statement pursuant to GPO 2.1.05.

3

Conduct preliminary Garrity (17 questions) interviews of involved officer[s].

4

Ensure that all WCSs are downloaded/preserved.

# What are the duties of the members of the Administrative FIT investigative team?

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5

With the criminal FIT investigators, conduct canvass[es] for potential civilian witnesses.

6

Ensure the collection of all duty reports, training records, and any relevant documentary evidence within the possession of CDP.

7

Meet periodically with criminal FIT investigators and the Crime Scene Unit to ensure the appropriate flow of information.

8

COMPLETE THE ADMINISTRATIVE INVESTIGATION WITHIN 60 DAYS, unless the Chief approves an extension.



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.



Ensure that all witness officer(s), pursuant to the Use of Force Reporting GPO 2.01.05, have completed their narrative statement.



Ensure that the FIT Administrative investigator has uploaded all relevant case documentation and material into the use of force tracking software.

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What are the duties of the FIT Administrative OIC after the scene is cleared?





Ensure that the FIT Administrative investigator has completed a Force Investigation Report, contents of which will be discussed later.



Ensure that the administrative investigation is completed within sixty [60] days unless an extension has been approved in writing.



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



Within seven [7] days of the conclusion of an administrative investigation including the completion of compelled interview that have been delayed, an investigative report shall be completed.

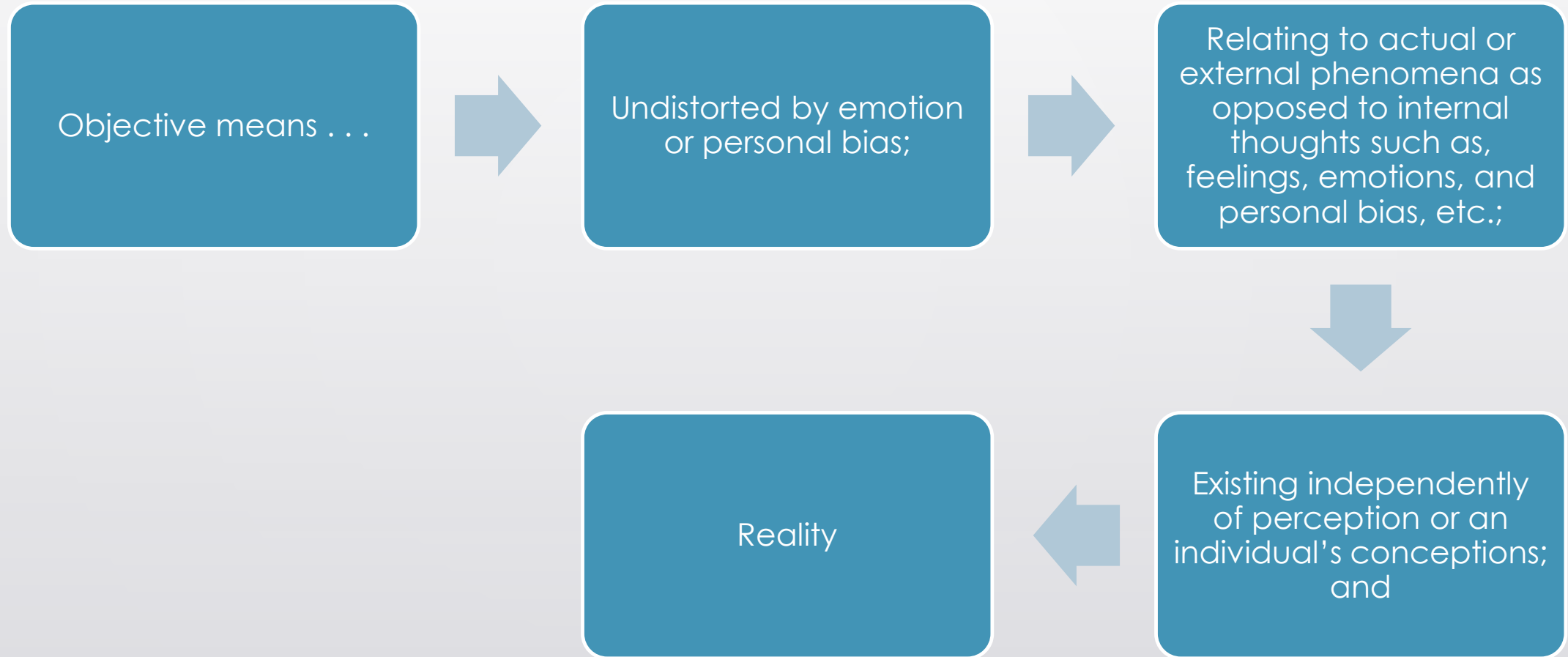
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What are the duties of the FIT Administrative OIC after the scene is cleared?

## Module 5

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

# What is an Objective Investigation?



## Who is an objective investigator?

A person who has no interest in the outcome of the investigation;

A person who does not care about the conclusion or findings of an investigation; and

A person who is detached from the outcome of the investigation

# What is an objective investigation?



It is a fact finding mission



It is a systematic collection of  
the facts



What are the problems of a  
bias investigation?



What is a systematic  
collection of facts?



# What is bias free policing?

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We all have biases . . . The question is can we put these biases aside when we do our job.

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GPO 1.07.08: Implicit Bias is defined as an attitude that affects our understanding, actions, and decisions in an unconscious and unintentional manner.

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These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control.

# Top three priorities for the Lead Criminal Investigator?

Why is the collection of physical evidence such a high priority?



## **Brief**

Be briefed by the senior officer on scene. Why?  
Discussion.



## **Secure**

Secure the scene. Why?  
Discussion.



## **Document**

Work with the Crime Scene Unit to identify, document, and collect physical evidence.  
Why? Discussion

# Top three priorities of the Lead Administrative Investigator?

Why is obtaining timely Garrity statements such a high priority?



## **Brief**

Be briefed by the senior officer on scene. Why? Discussion.



## **Secure**

Make sure that involved officer[s] and witness officer[s] are separated and secured. Why? Discussion.



## **Document**

Assign and have IA sergeants conduct the preliminary Garrity [17 questions] interview[s] of the involved officer[s] and voluntary or Garrity statements from the witness officer[s].



# You are on a fact finding mission ... What or where are relevant facts derived from?

Facts are derived from four sources:

- Testimonial evidence
- Documentary evidence
- Physical evidence
- Demonstrative evidence



## Conducting a FIT interview:



- First, have a game plan or strategy.
- Confer with FIT OICs and develop a plan for the interview. The plan must be consistent with the objective collection of evidence. This is true for both civilians and officers.
- When conducting a canvass, questioning officers should have a check sheet to make sure that all the officers conducting the canvass are asking the same questions/covering the same topics.





## Conducting a FIT interview (cont.):



- There shall be no pre-interview discussion with involved or witness officer[s] regarding the substance of the investigation.
- No leading questions, no matter how frustrating it is trying to get the facts out of the person you are interviewing or because you believe you have the big picture... that is not objective fact finding.

# Defining leading questions

A leading question is a question that incorporates the answer into the question.

## Leading

- Officer Smith, you used your Taser on the subject because you were in fear for your own safety and the safety of others, correct?

## Non-Leading

- Officer Smith, what was the subject doing immediately before you used your Taser?
- Officer Smith, why did you use your Taser on the subject?



## Follow up questions

FIT members shall ensure follow-up questions are asked.

# Case Example



The subject officer said in his/her Garrity interview that his/her supervisor said it was okay to use "X".



In the Garrity interview of the supervisor, the following question was asked of the Supervisor . . . Do you recall ever advising P.O. \_\_\_\_\_ to use "X" to protect themselves?



Answer: 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.



What are some good follow-up questions?

## Interview of the involved officer

- A preliminary 17 question Garrity interview of the involved officer will be conducted on scene. No follow-up questions.
- Use of Force Blue Team will be completed by Internal Affairs.
- A full Garrity interview will take place in 48 to 72 hours.
- Extreme caution must be taken to ensure that the preliminary questions, Blue Team, and the full Garrity statements are not accessible to members of the criminal FIT



## Interviewing witness officer[s]

- Witness officer[s] are required to complete a written narrative statement before the end of their shift in accordance with the Use of Force GPO 2.1.05.
- Witness officer[s] are required to provide a statement to Internal Affairs, either voluntarily [preferred] or under Garrity.
- A Garrity statement cannot be provided to the criminal investigators without first consulting the appropriate County prosecutor.

# **Scene processing is the responsibility of the Crime Scene Unit [CSU] under the direction of the Criminal FIT OIC. Crime scene process shall include:**

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Overall scene photographs [with digital camera and images uploaded into the Digital Evidence Management System . . . DMS] will be taken first, including photographs of items of evidentiary value

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Evidence placarding

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Scene measurement and diagramming

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Involved and witness officer[s] may be compelled to submit to non-invasive forensic evidence collection

# Evidence/scene processing

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Involved officer[s] may be compelled to submit to blood alcohol and drug testing in accordance with Division policy.

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GSR, blood, DNA and trace evidence collection and testing may be ordered where they have probative value

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Upload all relevant case documentation and material into the use of force tracking software

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All video evidence will be uploaded into the DEMS including Taser downloads, regardless of whether the Taser was applied

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Obtain medical releases from all injured parties

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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:”

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## Force Investigation Report

## Force Investigative Report (cont.)



1. Description of the manner in which the FIT was notified;
2. Statement / identification of FIT personnel on scene;
3. Scene description;
4. Details on the canvass, both witness and video;



## Force Investigative Report (cont.)



5. Complete description of the involved subject;
6. Witness contact and interview information;
7. Description of injuries;
8. Preservation of forensic evidence, physical evidence, testimonial evidence, circumstantial evidence, documentary evidence, and any laboratory analysis related to such evidence.

## Force Investigative Report (cont.)



Additionally, the FIT Report shall include findings and recommendations as to the following:

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

## Module 6

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

## Review for Criminality



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

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

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Reasonableness is the lynch pin in this analysis.

# Review for criminality

Reasonableness, in the context of the  
use of force, means:

Being in  
accordance with  
reason, and

Not excessive or  
extreme.

Synonyms: rational,  
logical, sensible,  
and sound.



This is consistent with our Use of Force  
GPO 2.01.03, which states in pertinent  
part that, “reason and sound  
judgement will dictate the force option  
to be deployed.”



The use of force  
must be  
objectively  
reasonable.

- 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.
- I was scared for my life . . . While that may be reason to use force, the reason is NOT objectively reasonable.

The use of force must be objectively reasonable.

- “Objectively reasonable” use of force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on scene, rather than 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.

## What is Objective Reasonableness?

- Objective reasonableness is to be judged in light of the facts and circumstances confronting and reasonably known to the officer at the time of the incident. These factors include, but are not limited to the following:
  - The severity of the crime[s] at issue
  - Whether the subject is actively resisting arrest or attempting to evade arrest by flight
  - 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:

The influence of drugs and/or alcohol

Known or reasonably apparent mental illness, developmental disability or crisis incident

Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment

Limited English proficiency or other language barrier

The time available to an officer to make decisions

The availability of officers/resources to de-escalate the situation

Officers shall consider the following officer/subject factors and circumstances when choosing a force response (cont.):

The proximity or access to weapons by the subject

The difference 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

Officer's and subject's position [eg: being on the ground]

Officer's distance from the subject[s]

Officer's special knowledge or training, and

The degree to which the subject is already restrained [handcuffed, physically controlled by other, or whose mobility has been otherwise severely compromised]



# Administrative Review

Internal Affairs reviews officer[s] use of force not only under the “objectively reasonable” standard but TWO additional factors.

# What is necessity?

First, officers can use force only as necessary, meaning only when no reasonable effective alternative to the use of force appears to exist.

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.

## What is necessity? (cont.)

- Force has a lawful objective if:
  - To effect a lawful arrest or detention of a subject;
  - To gain control of a combative subject,
  - To prevent or terminate the commission of a crime,
  - To intervene in a suicide or self-inflicted injury , and
  - 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

First, 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



# Necessity and the Use of Deadly Force (cont.)

Second, 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:

- 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**
- 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?

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.

## Discussion

- VIDEO HERE/PLAY WCS

Should a FIT  
callout be  
initiated?  
Discussion.

Was the use of the  
CEW necessary?  
Discussion.

Was the use of the  
CEW  
proportional?  
Discussion.

Was the use of the  
CEW objectively  
reasonable?  
Discussion.

## Separate Factors

Proportionality and necessity are two separate and distinct factors that must be examined together in the context of using force. It is not one or the other. The use of force must be **both** proportional and necessary.



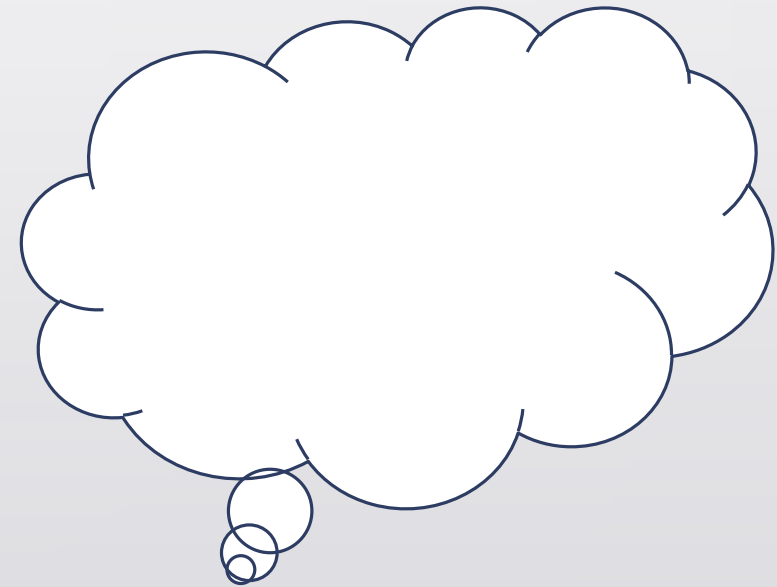
# Summary

- Use of force must be objectively reasonable, necessary, and proportional.
- If the use of force is not objectively reasonable, the officer may be subject to criminal prosecution.
- If the use of force is not objectively reasonable, necessary, and proportional, the officer may be subject administrative sanctions.
- Use of force decisions are dictated by the actions of the resistant or combative subject, the law, Division policy, tactics, and training.
- Reason and sound judgement will dictate the force option to be used.



So, one may ask the question, why spend so much time going over in detail the concepts for use of force and the definitions of necessity, proportional, and objectively reasonable?

Discussion.





Questions that FIT Criminal and Administrative Investigators have to answer in every investigation are:

Criminal Investigator



Has to be able to present to a prosecutor all the evidence that has any bearing on whether or not the officer's use of force was objectively reasonable.

Administrative Investigator



Has to be able to present to either the Chief or Safety Director all the evidence that has any bearing on whether or not the officer's use of force was: [1] proportional, [2] necessary, and [3] objectively reasonable.





**So everything you do at the scene, collecting evidence, drawing diagrams, canvassing civilian witnesses, interviewing involved and witness officers must be designed to objectively answer the previous questions. Your plans must be consistent with these objectives. Your execution must be consistent with the foregoing questions.**

## Module 7

Future Mandatory and Elective  
Training for every FIT Investigator

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

Basic Officer  
Involved Shooting  
course

Basic Scene and  
Evidence  
processing course

Crisis Intervention  
training, 8 hours

Administrative  
Investigation  
training, at least 8  
hours

Bio-mechanics of  
force incidents

Cognitive and  
Other interviewing  
techniques, at  
least 12 hours

Elective training:

- Investigative skills training
- Advanced interviewing

## Module 8

### Practice Exercise: Problem Solving

## Practice: Fact Based Scenario

- Officers observe a car speed past them at a clearly excessive speed.
- Zone cars follow and the suspect car turns down a dead end street.
- Passenger gets out and flees.
- Four officers believe that they are now in a foot pursuit.
- Driver of the vehicle turns the car around and drives toward the officers.
- The Involved Officer engages in two (2) separate incidents in which he fires his weapon.
- [Play WCS Video](#)



## First Step: On-Scene Supervisor

What is the first thing the on-scene supervisor does?

What is the second thing the on-scene supervisor does?

CCS calls Commander Connelly, does Commander Connelly initiate a FIT callout? Why?





## Next Step: Lt. of Homicide

**What are your first steps?**

**What is your investigative strategy?**

**What issues need to be resolved before presenting the case to the prosecutor?**



## Next Step: Lt. of Internal Affairs

**What are your first steps?**

**What is your investigative strategy?**



## Next Step: Members of the Criminal FIT

**What do you believe some of your assignments may be?**



## Next Step: Members of the Administrative FIT

**What do you believe some of your assignments may be?**

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

# Suspect's Statement

- The suspect stated that he was unbuckling his seat belt in order to get out of his vehicle, as he was commanded to do.
  - Does this fact alter whether or not the officer's firing of his weapon was objectively reasonable? Why or why not? Discussion.



# Conclusion


Questions?

You all are the best of the best . . . First, you were chosen to become members of Homicide and Internal Affairs. Second, from among the best, you were again chosen to become members of the FIT. As members of the FIT, you were chosen because of your integrity, experience, and training. All eyes will be on each one of you as you are called upon to navigate and investigate some of the most serious and sensitive cases that will ever be addressed by the Cleveland Division of Police.



# Thank You



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