



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Via Electronic and First Class Mail

The Honorable Tomas P. Regalado
Mayor, City of Miami
3500 Pan American Drive
Miami, FL 33133

Chief Manuel Orosa
City of Miami Police Department
400 NW Second Avenue
Miami, FL 33128

Re: Investigation of City of Miami Police Department

Dear Mayor Regalado and Chief Orosa:

This letter reports the findings of the Department of Justice's investigation of the City of Miami Police Department ("MPD") pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, to determine whether MPD engages in a pattern or practice of excessive use of deadly force by firearms. Based on our comprehensive review, we find reasonable cause to believe that MPD engages in a pattern or practice of excessive use of force with respect to firearm discharges. We arrived at this conclusion based on interviews of relevant witnesses; a careful review of MPD policies; reviews of investigative files in connection with incidents of firearms discharges; and reviews of policies and practices related to internal investigations of uses of deadly force. Among other findings, our investigation uncovered a number of troubling MPD practices, including deficient tactics and supervision, as well as significant delays and substantive deficiencies in deadly force investigations.

In making these findings, we recognize the challenges that MPD officers confront on a daily basis. The delivery of police services is a difficult, and often dangerous, job in which the use of force, including the use of deadly force, is sometimes necessary. By addressing our findings, the City of Miami will not only ensure that its police department operates in a manner consistent with the Constitution, but will improve officer and community safety and increase community confidence.

Between 2008 and 2011, MPD officers intentionally shot at individuals 33 times.¹ While the number of shootings alone does not itself establish a pattern or practice of unreasonable force, it stands in stark contrast to a 20-month period in 2002-2004 in which there were no MPD officer-involved shootings at persons.

In addition, MPD has fully investigated only 24 of the 33 shooting incidents between 2008 and 2011, and has allowed multiple investigations to remain unfinished for three years or longer. Of the 17 shootings from the 2010-2011 period, only 10 have a completed investigation. MPD itself determined 3 of these 10 shootings were unjustified, including one shooting in which Chief Manuel Orosa reversed the findings of the Firearms Review Board, which had originally found the shooting justified. Throughout the entire period of our review – 2008 through 2011 – we identified other shootings that appear unjustified and may have resulted from tactical and training deficiencies.

Finally, a small number of officers were involved in a disproportionate number of shootings. A combination of seven officers participated in over a third of the 33 officer-involved shootings. Had the shooting investigations been completed in a timely fashion, corrective action could have been undertaken and may have prevented the harm that can result from officers' repeated shootings, such as injury or death to the officer and/or the subject, trauma to the officer and others, and costly legal settlements, among other types of harm.

We commend MPD and Chief Orosa, who was sworn in on December 20, 2011, for recognizing some of the problems we found and pursuing initiatives to address them, such as those laid out in Chief Orosa's July 2012 written response to our investigation, which include the restructuring of the Tactical Operations Section, improvements to community relationships, establishment of a Professional Compliance Section, the proposed creation of a Major Case Team to investigate officer-involved shootings, and changes to the case review process in Internal Affairs, among others. We look forward to continuing our collaborative relationship with MPD in crafting and implementing sustainable reforms. Our review benefited from the productive dialogue we have had with MPD supervisors and officers, City of Miami officials, the Civilian Investigative Panel, and members of the Miami community.

Although we appreciate the cooperation and professionalism that MPD personnel demonstrated during the investigation, our ability to complete the investigation was delayed by MPD's frequent inability to produce necessary documents in a timely fashion. Delays in production were partly attributable to the fact that so many internal investigations were long overdue and could not be reviewed until completed. For example, despite repeated requests beginning from our first document request dated December 9, 2011, and follow-up requests dated July 20, 2012, September 20, 2012, and November 1, 2012, we still have not received the complete file for all of the shootings files we requested. It took months for us to receive other shooting investigation files we requested. More timely investigations, better investigative tracking and effective accountability measures would help MPD to prevent such internal delays and would likely reduce the number of officer-involved shootings going forward.

¹ This includes shootings that resulted in both fatal and non-fatal injuries and those in which an officer fired but missed. We reviewed all shootings for which MPD provided documentation.

I. BACKGROUND

This is the second time that the Department of Justice has had cause to investigate MPD in about a decade. Our first investigation, which began in May 2002, was predicated on allegations that officers used excessive deadly and non-deadly force. In the year prior to commencing that investigation, thirteen MPD officers were indicted on conspiracy charges for lying and planting physical evidence, including guns, in an effort to undermine the investigations of four officer-involved shootings. The indictments implicated officers at various levels of the chain of command, including supervisory staff, and resulted in six convictions. Then-Mayor Joe Carollo and Chief Raul Martinez, who was shortly thereafter succeeded by Chief John Timoney, requested a federal investigation of the department when the indictments became public. During the course of that investigation, we inspected MPD operations on four occasions, reviewed numerous policies and case files, interviewed members of the community and MPD staff, and provided detailed technical assistance.

We did not find a pattern or practice of excessive force in officer-involved shootings during the first investigation, but we uncovered serious deficiencies in MPD's investigative practices and observed that officers' use of deadly force was sometimes avoidable. MPD investigators routinely failed to pursue inconsistencies in officer or witness accounts, and left glaring omissions unexplored. The presence of conflicting statements and omissions, left unresolved by investigators, raised serious questions about the usefulness of the investigations and MPD's ability to discern what actually happened. In some cases, investigators also failed to question apparent breaches of the chain of custody of key evidence, such as a subject's gun. We concluded that MPD's failure to thoroughly investigate shootings, like the deficiencies we found in investigations of other types of uses of force, led to dubious internal conclusions about the appropriateness of force. These deficiencies led to a heightened risk that MPD officers would use force, including deadly force, excessively.

Although MPD demonstrated a willingness to address our concerns in several areas, a significant number of troubling uses of force occurred after our March 2003 technical assistance letter. In a follow-up technical assistance letter in January 2006, we recommended that MPD improve accountability by modifying its policies and training to require, among other things, more diligent and thorough investigations by supervisors. We recommended that MPD improve training for line supervisors and Internal Affairs investigators in interview techniques, assessing the credibility of witnesses, and impartiality in the interview process. We recommended that training emphasize that investigators should consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, in making credibility determinations.

In response to our technical assistance, MPD revised its policies, procedures and practices to ensure that every use of force is reported and adequately investigated. MPD made important changes to its policies that significantly restricted the use of deadly force, resulting in a 20-month period between December 2002 and September 2004 when no MPD officer discharged his or her firearm at anyone. We attributed this dramatic improvement to changes in policies and

procedures, increased accountability, and increased supervision within the specialized units, such as SWAT and the Problem-Solving Teams. Accordingly, we closed the investigation without a formal agreement in 2006.

Our current investigation commenced on November 16, 2011, after MPD officers fatally shot seven young African-American men during an eight-month period spanning 2010 and 2011. The shootings gave rise to widespread community concern about MPD's use of deadly force and led to multiple requests for a Department of Justice investigation. Like the prior investigation, the current investigation also arose during a wave of corruption allegations involving sworn MPD officers and supervisors, including allegations of extortion and obstruction of justice.

This investigation was a joint effort of the Civil Rights Division and the United States Attorney's Office for the Southern District of Florida. We conducted our investigation with the assistance of a police practices use of force expert who assisted us during our prior investigation. We reviewed approximately 17,000 documents, including forensic reports, investigative reports, transcripts, photographs, recordings, policies and procedures, and training materials. We also interviewed Chief Orosa, MPD command staff, homicide detectives and sergeants, Internal Affairs personnel, and representatives from the Fraternal Order of Police. In addition, we met with citizens' groups, other community leaders and victims' family members.

II. APPLICABLE LEGAL STANDARDS

Section 14141 authorizes the United States to file a legal action when it has reasonable cause to believe that a law enforcement agency engages in a pattern or practice of violations of the Constitution or laws of the United States. For a court to find a pattern or practice, it does not need to find a set number of incidents or acts. *See United States v. W. Peachtree Tenth Corp.*, 437 F.2d 221, 227 (5th Cir. 1971) ("The number of [violations] . . . is not determinative In any event, no mathematical formula is workable, nor was any intended. Each case must turn on its own facts"). A pattern or practice may be found by examples representing typical conduct, as opposed to isolated instances. *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 n.16 (1977) (noting that the phrase "pattern or practice" "was not intended as a term of art," but should be interpreted according to its usual meaning "consistent with the understanding of the identical words" used in other federal civil rights statutes).

Courts analyze Fourth Amendment claims of excessive force, deadly or not, under the Supreme Court's objective reasonableness standard. This standard weighs the level of force used by an officer against: 1) the severity of the crime; 2) the immediacy of the threat posed by the suspect; and 3) whether the suspect sought to evade or resist arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Scott v. Harris*, 550 U.S. 372, 382-84 (2007); *see also Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 924 (11th Cir. 2000); *Crenshaw v. Lister*, 556 F.3d 1283, 1290 (11th Cir. 2009). Police should also provide a warning, if feasible, before using deadly force. *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985). A police officer may not use deadly force against an unarmed and otherwise non-dangerous subject, *see Garner*, 471 U.S. at 11, and not every situation involving an armed subject calls for the use of deadly force. *Graham*, 490 U.S. at 396-97; *Pablo Hernandez v. City of Miami*, 302 F.Supp.2d 1373, 1376-80 (S.D. FL 2004). In the case of fleeing suspects, a law enforcement officer may use deadly force if he or she "(1) 'has

probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others' or 'that he has committed a crime involving the infliction or threatened infliction of serious physical harm'; (2) reasonably believes that the use of deadly force was necessary to prevent escape; and (3) has given some warning about the possible use of deadly force, if feasible." *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009) (quoting *Vaughan v. Cox*, 343 F.3d 1323, 1329-30 (11th Cir. 2003) and *Garner*, 471 U.S. at 11-12); see also *Scott*, 550 U.S. at 382 n.9 (2007) (explaining that *Garner's* use of "to prevent escape" was merely an application of the main prong which is "to prevent serious physical harm").

The deadly force analysis requires a balancing of the nature and quality of the intrusion on the individuals' Fourth Amendment interests against the interests of the government, which include protecting the safety of the involved police officers as well as the public at large. See *Mercado v. City of Orlando*, 407 F.3d 1152, 1157 (11th Cir. 2005). Courts consider the reasonableness of an officer's use of force through a fact-dependent inquiry that is based on the totality of the circumstances. "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397; see also *Fils v. City of Aventura*, 647 F.3d 1272, 1288 (11th Cir. 2011) (engaging in a fact-intensive inquiry of the circumstances confronting officers prior to use of force to assess reasonableness).

III. FINDINGS REGARDING USE OF DEADLY FORCE

We find that MPD engages in a pattern or practice of excessive force with respect to firearms discharges, in violation of the Fourth Amendment to the United States Constitution and Section 14141. In 2006, we closed our first investigation confident that MPD had adopted and implemented the reforms necessary to ensure constitutional policing, as well as a system of accountability to ensure that those reforms would endure. Unfortunately, many of the systemic problems we believed were fixed have reoccurred, evidenced by a steady rise in officer-involved shootings.² As detailed further below, MPD itself recently found three of these shootings unjustified, and we found that a number of additional shootings were questionable at best. Many arose as a result of tactical and/or operational deficiencies, and opportunities to learn from these deficiencies were squandered by inadequate and untimely investigations. While the significant decrease in the number of shootings in 2012 while under increased public scrutiny indicates that MPD may be capable of addressing this problem,³ it also underscores that the previous spike in officer-involved shootings may have been avoidable, and that continued, court-enforceable oversight is necessary to ensure lasting reforms.

² There were no shootings in 2003, two in 2004, four in 2005, one in 2006, seven in 2007, eight in 2008, eight in 2009, eight in 2010, and nine in 2011.

³ There were four shootings in 2012.

A. The City of Miami Police Department Has Engaged in a Pattern or Practice of Excessive Force in Officer-Involved Shootings at Persons

1. MPD Itself Found that Officers' Use of Force Was Unjustified in Three Cases

In the past three years, MPD has found at least three officer-involved shootings unjustified. In one case, MPD terminated the officer after he killed an unarmed motorist and wounded an unarmed passenger in 2011. MPD rejected the shooting officer's statement that he saw a dark object in the driver's hand that appeared to be a weapon. MPD also appeared to credit a witness's account that the passenger complied with the officer's demands to show his hands. Notably, the shooting officer was also involved in a non-shooting role in a 2008 shooting that is still under investigation. Had MPD fully investigated the 2008 shooting, perhaps retraining or other corrective action may have been taken which could have influenced whether the 2011 shooting had to occur.

In the second case, MPD disciplined an officer after the officer shot at a motorist who reached into his back pocket to retrieve his wallet after the officer requested identification. The Firearms Review Board voted 4-1 that the shooting was justified. The dissenting Firearms Review Board member noted that (1) the officer should have anticipated that the driver would reach into his rear pocket to get identification; and (2) it was questionable that the officer gave several commands as he claimed. Chief Orosa overruled the Firearms Review Board to find the shooting unjustified.

In the third case, MPD disciplined an officer after the officer shot several times at a subject in a fleeing vehicle. The officer had witnessed the subject repeatedly shoot another man in front of a building before the subject turned the gun towards the officer and then entered a vehicle and fled. The Firearms Review Board found that the officer was unjustified in delivering the last of several shots since the car was fleeing and there was no longer an imminent threat to the officer. It is extremely dangerous to shoot at a moving vehicle and the practice is prohibited by policy in many departments. Should the driver become incapacitated; he or she could lose control of the vehicle creating a serious risk of harm to bystanders.

MPD's own finding of a 13% unjustified shooting rate (3 of the 24 completed investigations) is one factor underlying our determination of a pattern or practice of unconstitutionally excessive deadly force. Throughout the entire period of our review – 2008 through 2011 – we identified other shootings that appear unjustified and may have resulted from tactical and training deficiencies. In order to ensure that the use of deadly force by law enforcement officers is constitutional and limited, an agency must maintain clear policies and procedures, require effective training, provide close supervision, hold individuals accountable for their actions, and ensure complete, objective and timely investigations of uses of force. Further, an agency must ensure that the lessons learned in shootings reviews about training, tactics, equipment and policy actually result in changes to policy, training and practice, if warranted. MPD's deficiencies in these areas have created an environment in which unnecessary harm occurred, and in which the threat of future unnecessary harm persists.

2. MPD Officers Routinely Employ Poor Tactics

Many of the shooting investigations that we reviewed, including those that did not involve officers from specialized units, revealed poor tactical decisions by officers. MPD's own review of some of these incidents recognized deficiencies such as poor marksmanship, shooting from too great a distance, failure to follow perimeter protocol, and firing at a moving vehicle. In other incidents, though, as described below, we found other serious deficiencies that MPD did not find. In addition to increasing the likelihood that officers will use deadly force unnecessarily, tactical deficiencies can endanger the lives of officers and bystanders.

On multiple occasions, we found that officers failed to await backup before engaging a subject known to be possibly armed, thereby placing themselves and civilians in danger. In one case, an officer conducted a felony stop in a busy traffic intersection when he had reason to believe that the subject was armed. Numerous civilians were in the vicinity as the officer and subject subsequently exchanged gunfire, exposing civilians to grave potential harm. The officer should have waited for backup and attempted to conduct the stop in an area with less civilian activity. In another case, an officer apparently entered a dark building alone in search of an unknown and unarmed subject, who was ultimately shot by the officer. The circumstances of the search did not present an immediate risk to the public that necessitated entry without backup. The officer had no information about whether or not the subject was armed prior to entering the building and placed himself at significant risk of harm by proceeding without assistance.

There were several incidents where officers fired their weapons without sufficient regard for potential risks to the community. MPD noted some incidents where officers' marksmanship was questionable or where officers fired from too great a distance to assure accuracy. Our review noted several reports of officers' bullets being lodged in the homes and vehicles of bystanders. Stray bullets can be lethal to innocent bystanders, but the conduct of officers in several cases suggests that this risk is not recognized as an important tactical consideration. In one case, an officer chasing a subject fired numerous shots into a dark alley that was surrounded by homes, but investigators apparently could not determine the terminus for most of the shots. In another case, an officer fired at a moving vehicle in a populated area after the risk of danger posed by the driver had abated. These examples present very real dangers that should require MPD to demand restraint when officers use deadly force.

We were also concerned that officers failed to avail themselves of feasible lower-force options before shooting at someone, especially in cases involving persons in obviously compromised mental states or persons with mental illness.⁴ In one example, officers entered the residence of a possibly armed subject without backup. The subject was clearly inebriated, stumbling, and moving slowly. The subject approached the officers while armed with a knife and was shot. At least one other officer-involved shooting involved similar facts, in which the officers may have been able to maintain a safer distance between themselves and the subject, thereby reducing risk of harm to themselves, if they had waited for backup and used less-lethal options that were available to them at the time. In another case, a man known by MPD to have

⁴ On September 12, 2012, we similarly found that the Portland Police Bureau (Oregon) engaged in unnecessary or unreasonable force during interactions with people who have or are perceived to have mental illness. (http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf).

mental illness was shot after he lunged at officers with a broken bottle. Numerous officers unnecessarily surrounded the man, escalating the situation, while a member of the Crisis Intervention Team (CIT) was attempting to speak with him. When the large number of officers surrounded the man and unsuccessfully attempted to deploy an electronic control device, they negated efforts by the CIT officer to de-escalate the situation towards a non-violent outcome. Although MPD had a CIT officer on the scene, unlike other cases involving persons with mental illness, the supervising officers failed to control the scene so that the CIT officer could do his job. An alternative approach prioritizing de-escalation techniques might have eliminated the need to use deadly force. Frequently, the failure of supervisors to command and control the scene in this and other deadly force incidents fostered poor tactical choices by the officers.

Given the poor tactics and inadequate investigative practices apparent in our review of shootings, we expected to see more personnel receive retraining. We are aware of few shooting cases where retraining was recommended at the conclusion of an investigation. Similar to what we observed during our first investigation, the failure to recognize poor tactical choices and require remedial training is partly the result of problematic investigative processes that conceal, if not ignore, deficiencies. This lack of retraining, alongside an ongoing pervasive use of poor tactics, suggests that inadequate tactical training and policy deficiencies may be contributing to avoidable uses of force.

3. Improper Actions by Specialized Units

Several shootings involved officers from MPD's specialized units, including the Tactical Robbery, Crime Suppression, Special Operations, Canine, and Gang Units. In 2008 and 2009, 3 out of 16 shootings involved an officer from a specialized unit, whereas 9 out of 17 shootings that occurred in 2010 and 2011 involved these officers.

Despite written MPD policy requirements, we found that specialized units do not always strictly adhere to operational plans. In one case, for example, a team of officers in a specialized unit improperly deviated from the requirements of a tactical plan. Using unmarked vehicles, the officers diverted from a plan in which they were only to provide particularized assistance when requested and, instead, followed a young man walking on the street. The officers ultimately shot the man, who had been carrying a gun. As noted above, not every situation involving an armed subject excuses the use of deadly force. *Graham*, 490 U.S. at 396-97. Here, the officers relied upon questionable grounds to initially approach the man, as they had no basis to believe that the subject was armed. Moreover, the officers' statements regarding whether or not they actually identified themselves as police officers and issued a verbal warning before shooting are, at best, uncertain. *See Garner*, 471 U.S. at 3 (finding that even in situations where deadly force may be justified, a warning should be given, if feasible).

Our review of completed shooting investigations raised several additional concerns about the role of specialized units. In several of the incidents, there were no marked police vehicles involved in the initial felony stops, and officers who participated in the related shootings and arrests were not immediately recognizable as officers. When unmarked vehicles are not immediately identifiable as police vehicles, and officers are not immediately identifiable as officers, confusion can lead to dangerous actions by officers, subjects and bystanders. The

potential dangers in MPD's practices are compounded by weak tactical planning, failures in after-incident analysis of tactical operations, and inadequate supervision of officers in the specialized units. Behaviors exhibited by some members of specialized units also suggest a lax recruitment process that insufficiently vets officer suitability for assignment to the units. We understand that MPD reduced the size of some of the specialized units in 2012 and returned a number of officers to patrol, ostensibly reducing the number of officers a single supervisor must manage, and we concur with this decision.

B. MPD's Investigations of Officer-Involved Shootings Are Inadequate

In order to maintain an effective system of officer accountability, use of force investigations must be timely and thorough. An effective accountability system ensures that problematic conduct is identified and effectively remediated at all levels within a police department, from the actions of an individual officer to department-wide operations. MPD's failure to timely and thoroughly investigate officer-involved shootings undermines accountability and unnecessarily exposes the community and officers to risk. This is especially true where an officer is involved in multiple shootings, as is the case with several MPD officers. During our February 2012 tour and later meetings, MPD command staff acknowledged problems with the timeliness and quality of its officer-involved shooting reviews.

1. Outcomes of Shooting Investigations Are Unreasonably Delayed

Our investigation revealed that there are often egregiously long delays in concluding administrative investigations of officer-involved shootings. To date, to our knowledge, MPD has completed only 24 internal investigations for the 33 officer-involved shootings that are the subject of our investigation. Thus, for almost a third of the shootings, MPD has not reached a conclusion internally as to whether or not the officer's firearm discharge was within policy. In some cases, the investigations have remained open for more than three years.

One of the most troubling delays involves a fatal 2009 shooting in which the only living witnesses are the shooting officers. More than three years after the incident, the involved officers still have not provided statements about what transpired during the shooting. The Office of the State Attorney ("SAO") has been unable to evaluate the officers' criminal culpability in the case, and without SAO's official decision to decline prosecution, MPD has decided not to compel the officers to provide statements in order to resolve its internal administrative investigation. This type of delay is unfortunately not uncommon in MPD. Among the closed investigations, at least two remained open for more than three years before reaching a conclusion, and one open shooting investigation has been pending for more than five years.

MPD recently terminated an officer, albeit almost two years after the shooting occurred, for an unjustified shooting in which an unarmed man died and another was wounded. We note further that 4 of the 17 total discharges for 2010 and 2011 involved officers who have since been arrested, indicted, or convicted of crimes unrelated to the shootings. Yet, two of those four shooting investigations are still pending.

These delays prevent prompt corrective action and cause possible policy, training, or equipment deficiencies to remain uncorrected for months or even years, compromising officer safety, opening MPD to potential liability, and increasing the likelihood that avoidable shootings may continue to occur. Such lengthy delays also prolong stress for employees, victims and their families awaiting administrative outcomes and diminish the public's confidence in MPD's ability and willingness to be held accountable.

As further evidence of the importance of timely investigations, we also observed that a combination of seven officers participated in over a third of the 33 officer-involved shootings we reviewed. All seven officers – four of whom were members of specialized units – intentionally discharged their weapons at individuals on multiple occasions over the course of four years. One officer discharged his weapon in four separate incidents during a three-year period, resulting in three deaths, and two of the four discharges are still under investigation. Another officer fatally shot two suspects in separate incidents within a two-week period, and both of those investigations are still pending after more than two years.

The fact that an officer is involved in repeat shootings does not establish whether the deadly force used was unjustified, but it should raise concerns for agency leadership. Yet despite the large number of officers involved in multiple shootings, MPD shooting investigations continue to be delayed significantly. Such delay means that MPD is unable to provide timely and specific feedback or discipline to the involved officer. At least two of the seven officers shot and killed a suspect while still under investigation for a previous discharge. In almost all law enforcement agencies around the country, immediately following a shooting, an officer is removed from the street and placed on administrative duty. In MPD, this reassignment is very brief and the officer is returned to street duties long before – sometimes years before – any determination is made about the propriety of the shooting. MPD also apparently does not consider an officer's record of alleged or substantiated misconduct, including past shootings, as a reason to expedite review of a shooting incident. Given the frequency of shootings among a small subset of officers, combined with the number of recent "unjustified" determinations by MPD, the possible safety consequences of MPD's investigative delays are extremely significant.

MPD's policies should but do not include specific timelines for completing shooting investigations, to assist MPD's ability to prevent future shootings and to ensure that MPD can hold officers accountable for misconduct. State law requires that an officer be notified of disciplinary action within 180 days of an incident of misconduct. If notification occurs after the 180-day deadline, MPD risks being precluded from imposing discipline upon the officer. Although the pendency of a criminal investigation tolls the limitation period (*Fl. St.* § 112.532(6)(a)), we uncovered several pending and completed investigations in which MPD failed to determine disciplinary outcomes even 180 days *after* the SAO's criminal investigation ended. Assuming that the pendency of a criminal investigation is the only condition that may have tolled the statutory period for the cases under our scope of review, MPD may be barred from imposing discipline in approximately one-third of the shootings, even where it finds that the shooting was unjustified. By rendering disciplinary action impossible, MPD loses an essential tool in its system of accountability.

Confusion about how MPD's investigative units – Homicide and Internal Affairs – work together on shooting investigations may also contribute to the extensive delays we observed, as well as compromise investigative outcomes. In practice, it is unclear which unit is responsible for leading shooting investigations despite written policy guidelines. In one disturbing case, for example, investigators from Internal Affairs were prohibited by Homicide from being present when *any* statements were taken from the shooting officer or any witnessing officers, despite the fact that Internal Affairs was generally supposed to lead shooting investigations. MPD policy and practice should clearly delineate the respective responsibilities of the Homicide and Internal Affairs units in order to preserve the integrity of parallel criminal and administrative investigative processes, ensure objective fact-gathering, and assign responsibility for delayed outcomes.

We recommend that all involved entities coordinate efforts to ensure investigative tracking and timely outcomes. Based upon the documents we received from MPD, and the apparent difficulty that MPD encountered in locating some of the investigative materials, it appears that the system used for tracking use of force investigations in general is not used to track investigations of officer-involved shootings. We further recommend that MPD establish a reliable system for tracking the status of investigations and organizing relevant investigative materials.

2. Shooting Investigations Fail to Adequately Analyze and Explore Facts to Determine Whether a Shooting is Justified

As noted in our summary of the 2002 investigation, MPD has a history of conducting inadequate force investigations. Unfortunately, the troubling trends that emerged in our review of the completed shooting investigations this time are almost identical to the problems that we identified in our previous investigation. For example, we found that the files for recently completed investigations revealed little administrative or operational analysis by MPD. As a consequence, the opportunity to learn from an incident and apply lessons learned to future incidents, at both the individual and departmental levels, was lost. Administrative reviews became progressively less thorough over the period we analyzed, and MPD failed to address how the incidents and their investigations affected the department's relationship with the community.

In many of the investigative interviews of involved officers, we found that investigators did not sufficiently probe the officers' statements of events to determine if force was necessary and whether less-lethal options were available. Frequently, investigators asked leading questions and did not properly follow up on the answers. Investigators also failed to probe important details, such as whether the officer had attempted de-escalation techniques, and the relative physical positions of the officer and subject at the time of the shooting. These failures were especially troubling in cases where there were inconsistencies between shooting officers' statements, the statements of other officers, and the physical evidence. For those officers in the specialized units who were involved in shootings, investigators and reviewers did not always consider the units' operational policies or relevant after-action reports in evaluating the incidents.

Our review also revealed some disturbing lapses and omissions by MPD investigators. In one investigation, for example, multiple civilian witnesses alleged that officers involved in a

fatal shooting exhibited questionable behavior prior to the shooting. Despite physical evidence at the scene that partly corroborated the civilians' allegations, investigators did not mention the physical evidence in written reports or ask any of the involved officers about the allegations or physical evidence in their sworn statements, ignoring a relevant part of the investigation. In another example, officers failed to adequately preserve the shooting scene so that investigators could accurately determine the locations of the shooting officer, the subject and physical objects in close proximity at the time of the discharge. Even with the incomplete evidence that was preserved in that case, a laboratory analysis based upon photos of the scene appears to suggest that MPD failed to provide the lab with the entire set of photos that it had collected, and therefore the lab may have reached an erroneous conclusion because of the omitted photos. It is impossible to have accurate and thorough internal investigations with such lapses and omissions.

Finally, we found that MPD does not adequately or timely capture the shooting officer's version of events, in two ways. First, in some of the earlier cases we reviewed, we found that MPD would complete an administrative investigation with the single exception of taking the shooting officer's statement, which would be taken as soon as the SAO declined to prosecute the officer. MPD routinely treats these statements as involuntary pursuant to its unnecessarily restrictive interpretation of *Garrity v. New Jersey*, 385 U.S. 493 (1967). *Garrity* is intended to apply narrowly to situations where the officer is required to give a statement or face termination, and the officer reasonably believes that the statement could be self-incriminating. It is not meant to apply to officers' routine documentation of their activities, including, for example, the completion of incident and use of force reports, or to discussing the same with department officials. *E.g.*, *United States v. Camacho*, 739 F. Supp. 1504, 1521 (S.D.Fla.1990) (noting that "the mere fact that the Defendants may have felt compelled to give a statement at the scene to their colleagues and superiors as a normal part of their duties as police officers is not enough to invoke *Garrity*").⁵

We recommend that MPD policy be revised to provide shooting officers the opportunity to give voluntary statements as soon as practicable after each shooting, but in any case within no more than 24-48 hours, absent exigent circumstances. MPD may also determine that compelled statements are appropriate if the Chief so decides after consultation with the SAO. MPD policy and practice should give the Chief the opportunity to compel statements if doing so will not interfere with any pending criminal investigation. Second, it appears that MPD has no mechanism to obtain a public safety statement from the officer immediately after a shooting. We recommend that MPD have a policy regarding the provision of a brief public safety statement immediately following a shooting, but in any case no later than the end of the officer's tour of duty, absent exigent circumstances.

⁵ On November 23, 2011, we provided comprehensive technical assistance to the Seattle Police Department regarding *Garrity* protections. Our Seattle Police *Garrity* technical assistance letter may be useful to MPD as well. <http://www.justice.gov/crt/about/spl/findsettle.php#police>

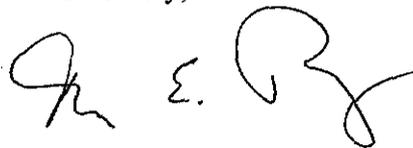
III. CONCLUSION

As noted above, we are encouraged that, since we opened our investigation and conducted on-site debriefings, MPD implemented or intends to implement certain changes to address problems with officer-involved shootings. We further note that the total number of shootings decreased significantly in 2012 to almost half of the total for each of the preceding four years. Recent reviews also appear to be more thorough and propose remedial actions to address errant conduct. However, given the fact that this is our second investigation of MPD within the last twelve years, and the fact that many of the deficiencies that we previously uncovered now appear to be deeply rooted, we are concerned about the sustainability of these recent changes.

We are reminded of the fact that, in 2006, we commended MPD for implementing some of the policy reforms that we suggested in 2003. We were hopeful at that time that the reforms were laying the foundation for the practice of constitutional policing in the City of Miami. However, the series of shootings that prompted our present investigation, and the findings we have made here, make clear that some of the problems are still entrenched. Our first investigation of MPD came after highly publicized incidents of MPD officers engaging in excessive force and corrupt conduct. Our second investigation has revealed systemic concerns about MPD's use of deadly force and comes amid another round of highly publicized allegations of corruption within the ranks of MPD.

We are hopeful that we can collaborate in the immediate future to craft and implement court-enforceable, sustainable remedies to correct the deficiencies we have identified. Please note that this findings letter is a public document and will be posted on the Civil Rights Division's website. The DOJ attorneys assigned to this investigation will be contacting the City's attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please contact Jonathan Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-5393.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', written in a cursive style.

Thomas E. Perez
Assistant Attorney General

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