



Fatal Force in Philadelphia

Photo by Phil Roeder

A Report to the UN Committee on the Elimination of Racial Discrimination

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I. INTRODUCTION

In 2014, the Committee on the Elimination of Racial Discrimination (CERD Committee), the United Nations body that monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), reviewed the United States.¹ In its concluding observations addressing the United States' compliance with ICERD, the CERD Committee raised serious concerns about "the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities." It further urged the United States to dramatically improve its investigation, prosecution, and prevention of police shootings.²

The United States, in its one year follow-up report, described the measures it has taken to abide by the committee's recommendations, highlighting in particular the Department of Justice's (DOJ) creation of a Collaborative Reform Initiative for Technical Assistance, "which responds to requests from law enforcement for proactive, non-adversarial, and cost effective technical assistance for agencies with significant law enforcement-related issues."³ The United States also emphasized that "U.S. federal, state, and local authorities take vigilant action...to hold accountable persons responsible for such use of force."⁴

Philadelphia has particularly acute issues involving shootings of people of color by the police and is a valuable case study of the accuracy of the United States' claims of vigilance at the local level. When police shootings rose dramatically in 2012, exceeding other urban centers like Houston, New York, and Chicago, the city requested technical assistance from the U.S. Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office) through the Collaborative Reform Initiative. The DOJ did a rigorous investigation of the Philadelphia Police Department (PPD) and made 91 recommendations for reforms to the PPD policies, practices, and training.⁵ While Philadelphia is attempting to implement some of those recommendations, it looks to be an uphill battle. This is exemplified by the recent shooting of Brandon Tate Brown. Clearly, the United States still has a long road ahead to meet its obligations under ICERD.

II. LACK OF PROSECUTION AND INVESTIGATION OF OFFICERS

a. Statistics on Excessive Use of Force against Racial and Ethnic Minorities in Philadelphia

Recent statistics compiled by the PPD reveal an astounding correlation between the lethal use of force by police and race or ethnicity. Between 2007 and 2014, police officers shot at 394 civilians; 90% of those were either African-American or Latino.⁶ Although African Americans only make up 44.1% of the population in Philadelphia, they are 80% of those shot at by police.⁷ Moreover, shootings by police officers hit their peak in 2012, a year when the rate of violent crimes and shootings of police officers dropped.⁸

Additionally, there is compelling evidence that the use of force by police is racially motivated. In 49% of the incidents in which the targeted civilian was unarmed, the officer mistakenly believed that the individual was armed due to the misidentification of a nonthreatening object (like a cell phone) or a movement (like an individual tugging at his or her waistband).⁹ If the individual was African American, the police officer was more likely to misperceive a

¹ Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States, Sept.25, 2014, ¶1.

² Id. at ¶ 17.

³ One-Year Follow-up Response of the United States of America to Priority Recommendations of the Committee on the Elimination of Racial Discrimination in its Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States, at 1.

⁴ Id.

⁵ U.S. Department of Justice, Collaborative Reform Initiative - An Assessment of Deadly Force in the Philadelphia Police Department, CNA Analysis & Solutions [hereinafter DOJ Report] (2015).

⁶ Id. at 2.

⁷ Id. at 3; 2014 Census Information, United States Census Bureau, available at <http://quickfacts.census.gov/qfd/states/42/42101.html>.

⁸ Sam Wood, *Exclusive: Shootings by Philly Police soar as violent crime plummets*, PHILLY.COM, May 14, 2013, http://www.philly.com/philly/news/Police_involved_shootings_in_Philly_soar_as_violent_crime_falls.html.

⁹ DOJ Report, at 3.

threat.¹⁰ These statistics are consistent with psychological studies on implicit bias in which subjects are much more likely to mistake a household tool for a gun when they were shown an image of an African American directly before.¹¹

This year has seen some improvement with respect to police shootings at civilians. By this time last year, twice as many civilians had been injured in police shooting and one more citizen had been killed. The number of times that police officers discharged their weapons also decreased by 12% from last year to this one.¹² However, the PPD has not publicly released information about the racial and ethnic composition of those fired on by police this year.

b. The Lack of Meaningful Oversight of the PPD

In Philadelphia, when someone alleges that a police officer has engaged in excessive use of force, three main entities have investigative powers: the District Attorney, the Internal Affairs Division, and the Police Advisory Commission. Each has failed to provide meaningful oversight of the PPD.

Between 2013 and 2014, police officers shot at sixty-five (65) civilians.¹³ The District Attorney (DA) has not pressed charges against a single officer.¹⁴ Historically, the Internal Affairs Division of the PPD, which reviews all complaints against police officers, has also failed to hold police officers accountable.¹⁵ Even in instances where it found wrongdoing, its sanctions were minimal.¹⁶ While the Internal Affairs Division rarely releases information publicly, the limited information available demonstrates that this trend continues. According the PPD's website, the Use of Force Review Board has yet to schedule a single review of a shooting by a police officer in 2015.¹⁷

Philadelphia has also established the Police Advisory Commission (PAC), the official civilian oversight agency of the PPD with the mandate of improving police–community relations in 1994. By law, the PAC is supposed to have access to a “all general summaries, statistical compilations and other internal reports on shootings, injuries . . .”¹⁸ However, the PPD has routinely refused to grant the PAC access to investigations and reports from incidents in which police fired a weapon, diminishing that body's role in reviewing complaints of excessive use of force by police officers.¹⁹ Indeed, of its 48 findings, the DOJ in 2015 stated that “the most notable [was] the need for the department to fully cooperate with the Police Advisory Commission.”²⁰

¹⁰ Id.

¹¹ Payne, B. K., Lambert, A. J., & Jacoby, L. L. (2001). Best laid plans: Effects of goals on accessibility bias and cognitive control in race-based misperceptions of weapons. *Journal of Experimental Social Psychology*, 38, 384-396; Payne, B. K. (2001). Prejudice and perception: The role of automatic and controlled processes in misperceiving a weapon. *Journal of Personality and Social Psychology*, 81, 181-192.

¹² <https://www.phillypolice.com/assets/crime-maps-stats/officer-involved-shootings/OIS-MasterReport-Statistics-102415.pdf>

¹³ PPD Use of Force Statistics, <https://www.phillypolice.com/ois/index.html>.

¹⁴ Id. Investigations by the DA remain pending in ten of the shootings, including one that occurred in January 2013, nearly three years ago.

¹⁵ Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (1998), available at <https://www.hrw.org/legacy/reports98/police/uspo108.htm>. <http://www.phillypolice.com/forms/official-complaint-process/>.

¹⁶ Id.

¹⁷ PPD Use of Force statistics, available at <https://www.phillypolice.com/ois/index.html>

¹⁸ Executive Order 8-93, Section 4 (Powers & Duties)

¹⁹ Police Advisory Commission to Subpoena Philadelphia Police-Involved Shooting Records, NBC, Feb 23, 2015, available at <http://www.nbcphiladelphia.com/news/local/Police-Advisory-Commission-to-Subpoena-Philadelphia-Police-Involved-Shooting-Records-293752071.html#ixzz3s4xsIx9x>; *Philadelphia Advisory Panel Gets Official Input On Police Shootings*, The Crime Report, October 17, 2015, available at <http://www.thecrimereport.org/news/crime-and-justice-news/2015-10-new-philly-police-shooting-rules>.

²⁰ Department of Justice Releases Report on Philadelphia Police Department's Use of Deadly Force, Department of Justice Press Release, March 23, 201, available at <http://www.justice.gov/opa/pr/department-justice-releases-report-philadelphia-police-departments-use-deadly-force>; See generally, U.S. Department of Justice, Collaborative Reform Initiative - An Assessment of Deadly Force in the Philadelphia Police Department, CNA Analysis & Solutions (2015).

c. Brandon Tate – Brown Case

The story of Brandon-Tate-Brown, a 26-year-old African American man, illustrates many of the deficiencies with police oversight and accountability highlighted above. On December 2014, after a routine traffic stop in the early morning hours, a police officer shot and killed Brandon Tate-Brown.²¹ Officers Nicholas Carelli and Hang Deng, new recruits who had only been on the force for a year and half, initially alleged that, after a physical altercation with police, one of the officers shot Brandon in the back of the head when he ran to the passenger side door and reached into the passenger side of the vehicle for the gun.²² The District Attorney decided not to prosecute Officers Carelli and Deng, stating that surveillance tapes, four witnesses, ballistics evidence and DNA results supported the original story of the two officers.²³

After the officers were absolved, evidence obtained through a lawsuit brought by Tanya Brown-Dickerson, Brandon's mother, raised considerable doubt about key details of the officers' story.²⁴ A surveillance video of the shooting revealed that Officer Carelli did not shoot Brandon as he reached into the passenger side of his car.²⁵ Rather he shot Brandon when he was at the rear of his car – with no immediate access to the inside of the car or the gun.²⁶ Additionally, an officer who was at the scene also told the Internal Affairs Division that he moved Brandon's dead body.²⁷

Particularly alarming is that fact that the PPD had access to all of this evidence from the very beginning of the investigation.²⁸ Still the officers were allowed to give false information to the public and the District Attorney.²⁹ After the evidence was uncovered, in the course of trial preparation, Police Commissioner Ramsey was forced to admit to the false information given by his officers.³⁰ Even with this knowledge, District Attorney Williams decided not to prosecute the officers.³¹ Officers Carelli and Deng received no significant disciplinary action.³² Their only sanction was being put on desk duty for roughly three months through the course of the internal investigation.³³ This case exemplifies the United States' failure to adopt the CERD Committee's concluding observations.

III. INCONSISTENCIES IN EXCESSIVE USE OF FORCE PREVENTION AND TRAINING

The US in their one-year follow up report also maintained that it prevented the use of force through training of police officers.³⁴ The DOJ in its review of Philadelphia noted concerning deficiencies involving PPD officer training. Of particular concern, the DOJ found the following:

- Training on the department's deadly force policy is inconsistent, infrequent, and confusing.³⁵

²¹ Katherine Scott & Vernon Odom, *Family Identifies Man Who was Shot, Killed By Officer in Mayfair*, 6 ABC News, <http://6abc.com/news/family-identifies-man-shot-killed-by-officer-in-mayfair/436792/>.

²² Internal Affairs Division Police Shooting Report, Dec. 15, 2014.

²³ Dana DiFilipo & David Gambacorta, *D.A. Clears Cops in Fatal Shooting of Brandon Tate-Brown*, Daily News, http://articles.philly.com/2015-03-20/news/60327169_1_two-officers-philly-officers-tanya-brown-dickerson.

²⁴ Dana DiFilipo & David Gambacorta, *City Releases More Details on Police Killing of Brandon Tate-Brown*, Philly Confidential, <http://www.philly.com/philly/blogs/dncrime/City-releases-more-details-on-police-killing-of-Brandon-Tate-Brown.html?c=r>.

²⁵ Id.; Video on file with Brian Mildenberg, the attorney representing Ms. Tanya Brown-Dickerson, Brandon's mother.

²⁶ Id.

²⁷ Interview of Officer Michael Hosgood by Internal Affairs Division.

²⁸ Interview with Brian Mildenberg, the attorney representing Ms. Tanya Brown-Dickerson, Brandon's mother.

²⁹ Id.

³⁰ Id.

³¹ City of Philadelphia, *District Attorney Williams Stands By Investigation Conducted Into the Shooting of Brandon Tate-Brown*, Press Release, <https://phillyda.wordpress.com/2015/06/16/district-attorney-williams-stands-by-investigation-conducted-into-the-shooting-of-brandon-tate-brown/>.

³² Interview with Brian Mildenberg, the attorney representing Ms. Tanya Brown-Dickerson, Brandon's mother.

³³ Id.

³⁴ One Year Follow Up Response to the United States of America to Priority Recommendation of the Committee on the Elimination of Racial Discrimination in its Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, at 3.

³⁵ DOJ Report, at 40-50.

- PPD officers do not receive any training on in-service defense tactics.³⁶ Since officers have not been trained in non-lethal ways to defend themselves, officers may be more likely to respond with lethal force when a physical altercation ensues.
- PPD recruit training is not conducted in a systematic and modular way. Firearm training, for example, occurs at the beginning of training for some recruits and towards the end of training for the others.³⁷
- Some recruits do not receive adequate de-escalation training, which is meant to help officers in minimizing the dangers of a hostile situation and could decrease threat perception failures and physical altercations with civilians.³⁸ Some recruits experience de-escalation training that is little more than lectures and observations.³⁹ Not all recruits receive adequate hands on training in de-escalation, a necessary skill as officer-involved shootings are attributed to either threat perception failures or physical altercations.⁴⁰
- The PPD's training of its investigative units that address use of force are also inconsistent.⁴¹ The homicide unit investigates police shootings that end in death and the detective division investigates those that do not end in death.⁴² Neither unit has specialized training or experience, nor protocols in place for investigating police shootings.⁴³

IV. IMPORTANT STEPS FORWARD, ONE BIG LEAP BACK

The Philadelphia Police Commissioner, Commissioner Ramsey has recently initiated some changes to the policies surrounding officer involved shootings.⁴⁴ Those changes include: naming police officers who shoot civilians within three days of the incident, allowing officers to review videos taken by their body cameras before they tell investigators why they fired their weapons, limiting the number of times an officer can fire a taser at a suspect, and notifying the PAC immediately after every officer involved shooting.⁴⁵ These new rules will also grant the PAC more access to the department's internal investigation of shootings.⁴⁶

While some of these rules are promising steps forward, there is one major leap back: the officer's ability to view the video recording of shooting before giving his or her version of the events. As the story of Brandon Tate Brown demonstrates, officers who engage in misconduct sometimes give misinformation to conceal the misconduct. Allowing an officer to view the recording before giving his account allows an officer craft a story that is supported by evidence. To deprive a citizen such an avenue, while giving an officer more tools to escape accountability with, cuts against the purpose of the new rules.

There has been significant pushback against Ramsey's initiatives. On November 19, 2015, the Pennsylvania House passed a bill that would prohibit local officials from identifying any police officers involved in a shooting until an investigation is completed.⁴⁷ Philadelphia's police union vehemently opposes the changes and has asked the state labor board to overturn them.⁴⁸ A hearing is set for January.⁴⁹

While Philadelphia has recently made some strides to revamp its review of police shootings, both statistics and individual accounts of police shootings demonstrate that police impunity remains a significant issue in Philadelphia.

³⁶ Id. at 6.

³⁷ Id. at 65-67.

³⁸ Id. at 69-70

³⁹ Id.

⁴⁰ Id. at 3

⁴¹ Id. at 6.

⁴² Id. at 99.

⁴³ Id. at 99.

⁴⁴ Mark Faziollah and Dylan Purcell, *New Rules for when Philadelphia Police Shoot*, THE PHILADELPHIA INQUIRER, Nov. 10, 2015, [hereinafter *New Rules*] available at http://articles.philly.com/2015-10-19/news/67591744_1_naming-police-officers-police-advisory-commission-police-misconduct.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ *Bill Makes It Illegal to ID Officers Who Shoot Civilians*, Philly.com, Nov. 10, 2015

<http://www.phillymag.com/news/2015/11/10/police-officer-shootings-bill/#VRHysfTp7vozXfHi.99>.

⁴⁸ *New Rules*, supra note 42.

⁴⁹ Id.