



CITIZEN REVIEW BOARD

SYRACUSE, NEW YORK

Building Trust Through Accountability

**Special Report:
Complaints of Excessive Force After Fleeing
June 2012 to December 2015**



**Joseph L. Lipari
Administrator**

**Peter Christiana
Board Chairman**

May 2016

Table of Contents

Executive Summary.....1

Findings and Data.....2

Discussion and Analysis.....4

Recommendations and Areas of Further Study.....6

Appendix: Force After Fleeing Chart, 2012 to 2015

Executive Summary

Under Section 7.4 of Local Law 1 of 2012, the Citizen Review Board (CRB) of Syracuse, New York is authorized to conduct analysis of patterns and practices of the Syracuse Police Department (SPD) and to make policy and training recommendations to the City and the Chief of Police. This report examines the prevalence of civilian complaints between 2013 and 2015 that alleged excessive use of force by members of the SPD when the force occurred during or shortly after a subject fled from police on foot, by automobile, or a combination of the two.¹ In most such cases, the complainant acknowledged fleeing from police but reported surrendering (usually with hands up or out to the side) when cornered, tackled, or upon succumbing to exhaustion. In most cases, the officers reported that the complainant placed their hands or arms under their torso and refused to place their hands behind their back necessitating strikes to the subject’s body, head and/or face.

The data presented in this report demonstrates a high rate of civilian complaints of excessive force after fleeing during 2013. However, the number of such complaints and their proportion of annual overall complaints drastically declined during the years of 2014 and 2015 as the CRB began to consistently sustain excessive force in such cases when the evidence warranted. The CRB, reestablished under new leadership in 2012 after many prior years of ineffectual performance, first detected a trend in such complaints in early 2013. Over the following three years, the CRB closely tracked such complaints. By 2015, it became apparent that the number and prevalence of such complaints was steadily and precipitously declining despite a lack of formal discipline being imposed by SPD command staff. Based on all available evidence, the CRB concludes that the explanation for the dramatic decline in such complaints is the CRB’s consistent focus on conducting thorough, impartial, and independent investigations of such allegations, combined with the emergence of a national discussion on constitutional policing and use of force. This mixture of factors appears to have significantly reduced the amount of unconstitutional police force being deployed against fleeing, unarmed subjects in the City of Syracuse.

Year	# of Excessive Force after Fleeing Complaints	Total # of Excessive Force Complaints	% Excessive Force after Fleeing of all complaints	% of Excessive Force after Fleeing of all Excessive Force complaints
2012*	6	27	8.6%	22%
2013	23	49	20%	47%
2014	11	43	10%	25.5%
2015	4	26	5%	15%

*It should be noted that the year 2012 represents only a partial data set since the new CRB did not become fully operational until June of 2012. Therefore, the data available for 2012 only represents approximately one half of a year’s worth of complaint intake which occurred prior to the Board’s sustained efforts at community outreach intended to increase public awareness of the CRB and the service it provides.

¹ The definition of Excessive Force is based on the “objectively reasonable” standard articulated by the U.S. Supreme Court in *Graham v. Connor* (1989).

Findings and Data

Based on the data accumulated by the CRB during 2012 to 2015, the following findings have been identified:

- Of the 44 separate complaints that involved 45 individual complainants:
 - 37 complainants were black, six were white, and two were Latino;
 - 33 complainants were under 40 years old;
 - All complainants were male.
- Thirty-eight cases involved complaints of strikes to the head or face.
- Four cases involved allegations of strikes with a flashlight to the head, which is considered deadly force under modern Use of Force policies; a fifth case involved a flashlight strike to the upper back.
- 41 complaints involved injuries to the complainant; ten involved an injury of an officer:
 - The most common injuries to complainants were lacerations and contusions to the head and face.
 - Four incidents resulted in a complainant's fractured orbital bone (eye socket);
 - Four incidents resulted in a complainant's broken nose;
 - Ten officers reported injuring a hand, finger, wrist, knuckle or other extremity during the use of force.
- In all but three incidents, subject officers were male.
- In all but five incidents, the subject officers were white. Two officers were responsible for the five incidents involving non-white officers.
- Only one complainant had a weapon on his person when force was used. Two complainants possessed a knife shortly before force was used and two others had a gun inside a vehicle shortly before force was used. However, the weapons either remained in the vehicle or were discarded during the pursuits and were far away from the location where the use of force occurred.
- Twelve distinct officers were each involved in two complaints of excessive force after fleeing; another four officers were involved in three such complaints.
- Nine cases involved officers from specialized units such as the Gang Violence Task Force (two), the Crime Reduction Team (four), Special Investigations Division (one), Criminal Investigations Division (two), and the Intelligence Unit (one). All other cases involved on duty patrol officers. One case involved officers from both the Gang Violence Task Force and the Crime Reduction Team.

- In 36%, or 16 of the 44 complaints alleging excessive force after fleeing, the CRB found substantial evidence that the use of force was not objectively reasonable and thus sustained the allegation of excessive force and recommended specific disciplinary action against the subject officer.
 - In 2013, the CRB sustained excessive force allegations in eight cases involving force after fleeing.
 - In 2014, the CRB sustained excessive force allegations in six cases involving force after fleeing.
 - In 2015, the CRB sustained excessive force allegations in two cases involving force after fleeing.

- In four of the 16 cases in which a CRB panel sustained excessive force against an officer, the panel also sustained untruthfulness against an officer for providing a false account of the incident.

- Twenty-one cases involved a significant variation between the use of force described by the complainant and/or witness and the use of force reported by the officer.

- Thirty-five cases involved a significant variation between the level of resistance described by the complainant and/or witness and the level of subject resistance reported by the officer.

- In eleven of the complaints involving allegations of excessive force after fleeing, the complainant also reported that an officer made a racially charged remark or used a racial slur directed at the complainant.

Discussion and Analysis

While each use of force incident is unique, the data contained in this report demonstrates that there are similar aspects among many of the reported Force After Fleeing incidents. The commonalities include:

- Significant discrepancies between how the complainant and the officers describe the complainant's level of resistance. Officers routinely portray the complainant as intentionally hiding their hands under their body, while complainants and witnesses often indicate that the complainant's hands were either extended in an obvious attempt to surrender or that the complainant's arms were trapped under their body while an officer's body weight was on top of the complainant, thus inhibiting the complainant from providing their hands to officers.
- Significant discrepancies between the complainant and the officers' account of the amount of force employed by an officer. In many cases, a complainant or witness reported more strikes, particularly to the head and face, than what officers reported.
- Officers tended to downplay the significance of injuries sustained by complainants during uses of force by describing the complainant's injuries as less severe than they were.
- The vast majority of allegations of excessive use of force after fleeing involved closed fist strikes, knee strikes, and kicks to the head or face.
- Similarly, the most common types of injuries sustained by complainants in force after fleeing incidents involved injuries to the head and face.
- The vast majority of allegations of excessive force after fleeing involved complainants who are young African American males, while the vast majority of officers accused of excessive force after fleeing are white male officers. However, this may simply reflect the characteristics of those individuals who are more likely to run from officers and the fact that the SPD is predominately composed of officers who are white and male.

It should be noted that the problem of excessive use of force after fleeing, at least anecdotally, does not appear to be a problem that is isolated to Syracuse. As other studies have pointed out, such incidents are commonly referred to as a "foot tax" or "run tax" by experts and individuals in other cities.² In many of the cases included in this study, the complainant reported that when he asked the involved officer(s) a variation of the question "why did you

² See The Washington Post article by Kimberly Kindy at https://www.washingtonpost.com/national/fatal-police-shootings-in-2015-approaching-400-nationwide/2015/05/30/d322256a-058e-11e5-a428-c984eb077d4e_story.html and the BuzzFeed article at https://www.buzzfeed.com/albertsamaha/baltimore-death-shines-light-on-brutal-police-rough-rides?utm_term=.hn4rXWnye#.pyQqKm8lp

beat me like that?” the officer(s) often responded by saying, “why did you run?” Moreover, during a confidential discussion with a recently retired Syracuse police officer the question was asked of the officer how prevalent the officer believed such actions to be. The officer casually indicated that it was a common practice not just in Syracuse, but also in most urban jurisdictions.

Despite the apparent prevalence of such unconstitutional uses of force in the context of a police pursuit, and the documented lack of command-level discipline imposed on officers who engage in such behavior, the evidence from the Syracuse experience over the past three years indicates that active and vigorous civilian oversight of law enforcement can and does have a significant impact on diminishing such behavior. After the CRB began consistently sustaining such allegations when the evidence so warranted, sometimes paired with an untruthfulness finding against the subject officer, the frequency of such complaints began to taper off in late 2013 and then drastically declined in 2014 and 2015. This suggests that civilian oversight, when properly applied, can have an important ameliorating effect on police-civilian relations and can reduce a jurisdiction’s liability and exposure to claims of excessive use of force by police.

In the course of preparing this report, there has been no indication that the dramatic reduction in complaints of excessive use of force after fleeing was caused by suspects becoming less likely to run from police or that police have become less likely to pursue a suspect on foot. In Syracuse, the end of the pursuit scenario is what appears to have changed in most cases. Syracuse police officers now appear to be more likely to refrain from unnecessary and unconstitutional uses of force on subjects whose only resistance is fleeing on foot or by vehicle.

The change is important. The practice of employing unconstitutional uses of force in such cases critically undermines police legitimacy in the eyes of the public and among those who experience it or witness it first-hand. This can ultimately discourage people from cooperating with police in solving crimes and addressing community concerns. Diminishing the frequency of such incidents has the potential to result in an increased sense of police legitimacy in high-crime communities and produce more cooperation between police and the public.

The CRB recognizes that the number of complaints of excessive force after fleeing received each year likely does not reflect the true number of such incidents that occur. However, the factors that lead an individual to file a complaint in such a case remain constant year to year. Therefore, the decline in reported allegations of excessive force after fleeing appear to be an accurate reflection of a real and significant decline in the occurrence of such incidents.

The decline is significant, but not necessarily permanent. The CRB must continue to track such allegations and consistently conduct thorough and independent investigations into such claims to ensure that the frequency of occurrence does not return to the previous levels of 2013.

Recommendations and Further Areas of Study

- The SPD should adopt a modern, comprehensive Use of Force policy similar to the one proposed by the CRB in its 2015 Annual Report. The Use of Force policy recommended by the CRB provides clearly defined categories of levels of subject resistance and specific forms of force officers are allowed to employ based on the subject's level of resistance. The SPD's current Use of Force policy provides no such guidance to officers. It simply directs officers to understand Article 35 of the NYS penal code that is the general justification for self-defense and applies to all people within the state of New York. It is not a specialized Use of Force policy for police officers.
- Each year the SPD should publicly report the ratio of the number of arrests made to the number of arrests that involved a use of force. National experts in policing and use of force maintain that if the number of arrests involving police use of force surpasses 5% of the total number of arrests, a problem likely exists in the department's training and/or Use of Force policies and practices. In 2015, the CRB requested such numbers from the SPD but that data was not provided to the CRB.
- Patrol sergeants are the most important first-line supervisors in ensuring constitutional policing in regard to uses of force. Patrol sergeants are also the most critical agents of management regarding accountability when an officer's use of force is not objectively reasonable. The SPD should invest in adequate training for all patrol sergeants to ensure that they have the requisite knowledge and integrity to thoroughly investigate, accurately report their findings, and hold fellow officers accountable when an officer's actions violate department policy, state law, or the constitution.