

# Accountability after Deadly Police Shootings

## The case of Tamir Rice



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## **Abstract**

*This thesis offers a descriptive analysis of police accountability in Cleveland, Ohio, after the police shooting of Tamir Rice. It argues that although the police is theoretically held to account through a variety of accountability mechanisms, there are severe practical limitations undermining the effectiveness of accountability. In many cases, the outcome of accountability mechanisms is largely predetermined. Key limitations are the close relationship between the actor and the forum responsible for ensuring accountability, the Supreme Court ruling determining the legitimacy of police use of force, and the police subculture. Testing the theoretical insights in accountability by Bovens and Walker, this thesis concludes that Bovens' definition of accountability is a useful definition for understanding and analyzing accountability. However, Walker's distinction between internal and external accountability in the context of the United States police is problematic. Accountability after the Tamir Rice shooting can only be understood fully if the Cleveland Police Department, the Cuyahoga County Prosecutor and the Cleveland city government are considered parts of the same actor rather than three distinct actors. Considering the three as one actor explains the behavior of each in the accountability process as well as the outcome of the identified accountability mechanisms.*

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## List of Abbreviations

BLM	Black Lives Matter
CDP	Cleveland Division of Police
CRD	Civil Rights Division
CIRC	Critical Incident Review Committee
DA	District Attorney
DOJ	Department of Justice
IAU	Internal Affairs Unit
Ptl.	Patrolman
RQ	Research Question
SCOTUS	Supreme Court of the United States
Sgt.	Sergeant
US/USA	United States of America
USC	United States Code

# 1. Introduction

Trayvon Martin was killed on February 26, 2012. The 17-year-old African-American was shot by George Zimmerman, a neighborhood watch volunteer in the gated community where Trayvon Martin's father lived. Zimmerman had called the police to report suspicious behavior and despite the police ordering Zimmerman not to pursue Trayvon Martin, Zimmerman followed him and in the following confrontation fatally shot Trayvon Martin. Trayvon was unarmed.

The death of the unarmed, black teenager sparked national outrage, which grew even larger after the acquittal of George Zimmerman. Four years later, Wesley Lowery (2017) describes the response of African-Americans to the verdict as an awakening experience:

“Peaceful black America was awakened by the Zimmerman verdict, which reminded them anew that their lives and their bodies could be abused and destroyed without consequence. Trayvon's death epitomised (*sic*) the truth that the system black Americans had been told to trust was never structured to deliver justice to them” (Lowery, 2017).

Throughout the United States of America (U.S.) people organized protests in support of Trayvon Martin (Williams, 2013). One of the protest groups was what would later become the Black Lives Matter (BLM) movement, or #Blacklivesmatter. Alicia Garza posted a Facebook status which included the phrase “Black lives matter”, which inspired her friend Patrisse Cullors. Garza, Cullors and a third activist Opal Tometi, quickly set up Twitter and Tumblr accounts carrying the slogan and #Blacklivesmatter came into existence (Lowery, 2017). The movement would become a national phenomenon one year later, after the killing of Michael Brown.

Michael Brown was shot on August 9, 2014, by police officer Darren Wilson. Michael Brown was an unarmed black teenager, like Trayvon Martin, but unlike Trayvon Martin was Brown's death the result of police action. Protests were being organized immediately after the incident and Ferguson, Missouri, became the center of media attention (Lowery, 2017). But Brown's death was not the first controversial police death of the summer. Eric Garner died after a chokehold administered by a New York police man twenty days earlier (Baker, Goodman and Mueller, 2015), John Crawford III was shot by a police man in an Ohio Walmart four days before

the Brown shooting (Swaine, 2014), and the mentally challenged Ezell Ford was shot by a Los Angeles officer two days after the incident in Ferguson (Skinner, 2017). Nonetheless, it was Ferguson that captured national headlines, mostly because not all protests were peaceful and the police responded with tear gas, police dogs and rubber bullets. (*RT America*, 2015) The media attention helped the protests quickly spread nationwide and they lasted throughout 2014, fueled by the deaths of Laquan McDonald in Chicago and the 12-year-old Tamir Rice in Cleveland. In the year 2014 #Blacklivesmatter became a national movement.

As expressed by Lowery, the deaths of Garner, Brown, Rice and all others are considered by many evidence of a justice system that fails to protect the African-American community (Lowery, 2017). An aggregate of polls conducted between 2014 and 2016 showed only 29% of blacks had “a great deal or quite a lot of confidence in police” (Newport, 2016). Furthermore, the vast majority of African-Americans cite accountability as the main reason for the protests (Morin and Stepler, 2016). This call for accountability and the feeling that accountability is lacking, is further exemplified by the intensification of protests after the acquittal of the defendants in the Brown and Garner cases in December 2014.

#Blacklivesmatter calls into question not just the behavior or the policies of U.S. police forces towards the African-American community, but it also questions the accountability afterwards. BLM activists express a deep mistrust in the ‘system’ conducting a truly independent investigation or enforcing any real consequences after an incident with possible police misconduct (Lowery, 2017). #Blacklivesmatter is a testament to the importance of well-functioning and transparent accountability, especially of organizations wielding as much power as police and justice organizations, including the authority to use force. With good police-community relations being a crucial element of effective local policing (Lister & Rowe, 2016), ineffective accountability mechanisms may ultimately result in ineffective policing.

The development of police accountability has been a constant process since the beginning of the twentieth century and over the last one hundred years, several accountability mechanisms have been established to hold police officers and law enforcement organizations accountable in the U.S. The most recent reform effort in the U.S. was the installation of federal legislation

approving federal investigations into civil rights violations by police organizations (Walker, 2003). But implementation of accountability has more than once been difficult and met by opposition. In fact, all federal civil rights investigations into police departments are currently suspended by Attorney General Jeff Sessions, pending a review of all investigations and the subsequent reform agreements (Posner, 2017). Furthermore, implementation does not mean the accountability mechanism is functioning as it is supposed to, nor does it mean the mechanism is effective in ensuring accountability. Further complicating the matter, the use of the notion of accountability has expanded significantly, resulting in an increasingly fluid meaning, which pushed Dubnick (2002) to call for the rescue of the concept rendering a redefinition necessary.

Mark Bovens (2007) was one of the authors taking Dubnick's plea seriously and responded by creating a conceptual framework to define and analyze accountability. Bovens' framework for accountability offers a general understanding of the concept, but empirical testing of the framework in various settings is required to confirm its accuracy. Where Bovens is concerned with the etymological debate on the concept of accountability, Samuel Walker (2003) instead has studied the development and implementation of police accountability in the U.S. His work provides a framework of the various police accountability mechanisms established in the United States. But with most police organizations being locally organized, police accountability in the U.S. may differ greatly depending on the county or state the department has jurisdiction over. Studying accountability in empirical settings is necessary to improve theoretical notions of accountability and may provide new insights in the development of best practices by identifying the weaknesses of different accountability designs.

The works of Bovens and Walker will provide the theoretical basis for an empirical study of accountability after a deadly police shooting. The case selected for this study is the shooting of Tamir Rice in Cleveland, Ohio. The 12-year-old was playing with a fake gun near a recreation center and a bystander called the police. Shortly after the call two police officers arrived at the scene and Tamir Rice was fatally shot in the abdomen (McGinty, 2015). The death of Tamir happened almost simultaneously with the decisions of grand juries not to indict the officers responsible for the deaths of Eric Garner and Michael Brown and in the following weeks racial tensions reached a boiling point, with riots in Ferguson, Missouri, and demonstrations organized

throughout the nation (Gurman, 2014). The deadly shooting of Tamir Rice provides an empirical setting in which the theories of both Bovens and Walker can be tested. Therefore, the Research Question (RQ) of this thesis is:

*How can theories of Bovens (2007) and Walker (2003) on accountability explain the deadly police shooting of Tamir Rice?*

The first section of this paper will discuss theoretical works on accountability in general and police accountability in the U.S. in particular, with a special focus on Bovens (2007) in the first section and on Walker (2003) in the second section. This chapter concludes with a theoretical framework design based on Bovens and Walker. The second section explains the methodology of this research, explaining the choice for a single-case study design and outlining how the research has been conducted and how the data has been analyzed, with the operationalization scheme (*figure 2*) as the central tool for analysis. The third section analyzes the Tamir Rice case using *figure 2*. The various accountability mechanisms are individually discussed on the basis of the indicators distilled from the theoretical framework. The fourth and final section of this thesis will use the results of section three in order to see whether there are any gaps in the theoretical framework, by discussing whether all identified accountability mechanisms are included in their work, or whether any mechanisms have been identified that cannot be fully explained by Bovens and Walker. This section will also focus on the outcome of the various mechanisms, and whether theoretical insights explain these outcomes.

## 2. Theoretical Framework

Since this thesis is grounded in theoretical notions of accountability, this chapter will focus on the theoretical debates concerning accountability. The chapter consists of three sections. The first section provides an overview of the etymological debate on accountability. Using Bovens' (2007) conceptual framework, this section will include the definition of accountability and the indicators for accountability, as well as a discussion on the importance of accountability and its different functions. After the concept of accountability is defined and explained, the second section will continue by zooming in on police accountability in the U.S. Since accountability designs in empirical contexts exist as the result of historical and ideological processes, their exact designs are context-dependent<sup>1</sup> and minor and major differences in accountability mechanisms exist even within the U.S. Cultural and institutional factors, for example the direct election of district attorney's in the U.S., further influence the development of accountability and affect the relationship between different actors within the design (Walker, 2003).

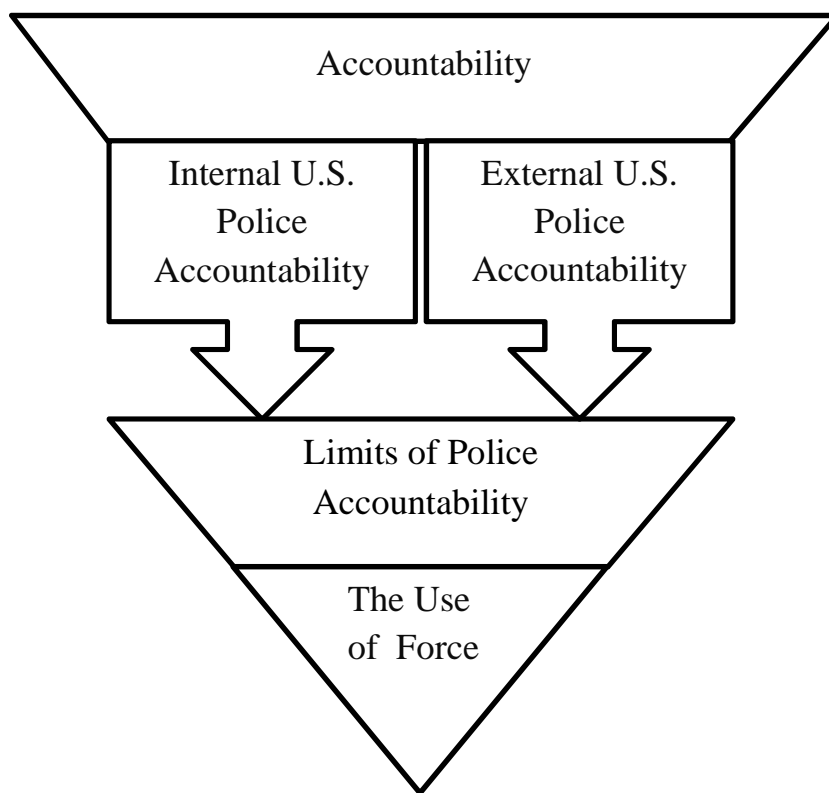
The second section will start with a historical overview of the development of accountability in the U.S., in which the various accountability mechanisms are divided in three categories: *internal* accountability, *external* accountability, and *federal* accountability – which itself is a form of *external* accountability, but one of its main purposes is the implementation of new *internal* accountability policies (Walker, 2003). The second part of this section focuses specifically on the limitations of accountability, discussing these mechanisms' potential weaknesses and why they may fail to effectively address police misconduct. These limitations may be specific to the design of the mechanism, but there are also factors that don't weaken any one particular mechanism. Instead, these factors may influence the outcome of any mechanism, regardless of design. It is for this reason that the influence of the organizational culture and the police subculture (Skogan, 2008) on accountability is discussed separately from design-specific issues, since they may offer explanations for opposition to any kind of policy reform or accountability mechanism. Finally, section two includes a discussion on the legitimacy of the *use*

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<sup>1</sup> Although context-dependency is important for understanding accountability, many historic developments have been transnational developments and different systems often share similar characteristics. For this reason it is important not to ignore insights from authors studying police accountability in contexts other than the U.S. Furthermore, comparative studies have provided additional insights into police organizations from an international point of view.

*of force* by police officers. Since this thesis focuses specifically on accountability of police after an use-of-force-incident, it is necessary to understand when the use of force is considered legitimate and when it is considered excessive. The standards for the *use of force* have been outlined by the Supreme Court and further developed by federal courts. This part of section two is therefore mostly a discussion of the most important court rulings.

*Funnel 1: Accountability and the Use of Deadly Force*



The third and final section includes an overview of the most important conclusions drawn from the previous sections combines them into a new theoretical framework, which will serve as the theoretical basis for this thesis. *Funnel 1* provides a schematic overview of this chapter. Collectively, the different sections of this chapter will help understand how accountability functions after a deadly police shooting incident.

## 2.1. General Theories on Accountability

### 2.1.1. *The Threatened Concept of Accountability*

Accountability has become a buzzword increasingly common in scholarly, professional, and everyday vocabulary. When following a discussion about a specific incident, the functioning of a policy or an organization in general, or about any particular decision taken, you are likely to hear the phrase ‘we need to hold them accountable’ at some point. The meaning of the concept has been expanded in recent years, and as such, its usefulness has declined. While accountability originally simply referred to accounting and bookkeeping<sup>2</sup>, it became a broader concept when theories on New Public Management (Dubnick, 2002: p. 16) became increasingly popular, referring to instruments designed to increase the efficiency and effectiveness of public agencies. Slowly but surely, the concept evolved from there to something that became a goal on itself (Bovens, 2007). Nowadays, accountability generally refers to an idea of governance that is inclusive, transparent and responsive, giving the concept a powerful potential for framing. “Accountability is one of those golden concepts that no one can be against... it conveys an image of transparency and trustworthiness. However, its evocative powers make it also a very elusive concept because it can mean many different things to different people” (Bovens, 2007: p. 448).

Although several authors noted the contested nature of the concept of accountability, they generally referred to a dual meaning of the concept and then continued with a discussion of what accountability means within their work, sometimes including a definition, or they quickly gloss over it and continued with the topic at hand (Bayley, 1995; Stenning, 1995; Chan, 1999; Reiner, 2000). It was for this reason that Melvin Dubnick calls for a “reexamination and reaffirmation” of accountability, in order to “sav[e] the concept...from the abuses it suffers in the hands of friends and advocates” (Dubnick, 2002: p. 1). However, in his discussion about the *concept* of accountability, Dubnick argues that the problems he identified with the *word* accountability are irrelevant, which he justifies by relying on Wittgenstein’s notion of *family resemblances* – where the different applications of the concept are related not by a common definition or common

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<sup>2</sup> Dubnick (2002: pp. 7-9), traces the etymology of the word accountability back to William the Conqueror, who in 1085 ordered *a count* of all the possessions of property holders in his kingdom. As Dubnick points out, modern use of the concept has flipped the meaning from government demanding accountability from its subjects, to subjects demanding accountability from its government.



properties, but based on our recognition of similarities between these concepts as though they are distinct members of the same family (Dubnick, 2002). Dubnick identifies at least four contexts where he considers the *concept* to be meaningful. More importantly, Wittgenstein's notion of *family resemblances* allows Dubnick to identify accountability as a 'genre' within the idea of governance; one that relies on "the existence of a 'moral community' that shapes (and is shaped by) the expectations, rules, norms and values of social relationships" (Dubnick, 2002: p. 6), in order to "establish and maintain some form of governing order in a social context" (ibid.). Fundamentally, Dubnick does not attempt to narrow the definition of accountability. Instead, argues that accountability should be a broad concept ('genus'), where the specific social context narrows the definition to more specific forms ('species') (Dubnick, 2002: p. 20).

### **2.1.2. Defining Accountability**

Mark Bovens takes Dubnick's call to 'save the concept of accountability' to heart and provides a conceptual framework for understanding, analyzing and assessing accountability processes (2007: p. 448). Bovens starts by distinguishes between a broad and narrow definition of accountability<sup>3</sup>. When taking the broad definition, accountability becomes an umbrella concept which includes a wide range of other concepts like transparency, efficiency and responsiveness. Such a broad approach towards accountability is problematic for two reasons. First, in such a broad sense it is almost impossible to properly define accountability, since the concepts included may differ depending on the context.<sup>4</sup> Secondly, because a broad definition of accountability includes a wide range of other concepts, operationalization of accountability becomes extremely difficult, since each concept included requires operationalization as well (Bovens, 2007: pp. 449-450). Therefore, Bovens offers a narrow definition of accountability:

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<sup>3</sup> In a separate article, Bovens adapts these broad and narrow definitions of accountability, stating that there is a divide in academic literature between accountability as a "virtue" or as a "social mechanism". In the first category of literature, accountability becomes a normative concept related to ideas of good governance and used to evaluate the behavior of actors; In the second category Bovens own definition becomes applicable and these studies focus on "whether [the actors] are or can be held accountable *ex post facto* by accountability forums" (Bovens, 2010: p. 948).

<sup>4</sup> Bovens does acknowledge the *family resemblance* between these differing definitions, with the definition generally coming close to something as "responsiveness and a sense of responsibility" (2007: p. 449).

*“Accountability is a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences”* (Bovens, 2007: p. 450).

Within this definition, both *actor* and *forum* may comprise an individual or an organization. While the relationship between actor and forum may be a principal-agent relationship, this is not necessarily the case. The *obligation* can be formal - meaning the actor is forced to participate in accountability procedures – or informal, in which case the accountability is in principle voluntary, often as the result of tradition or expectation. Following this definition, accountability becomes a three-step process, where the actor provides information about its performance, often accompanied with explanations and justifications, after which the forum has the right and means “to interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct” (Bovens, 2007: p. 451). The third and final step of an accountability process is a form of judgement by the actor *with the possibility of consequences*. This addition of the possibility of consequences (both positive and negative) to the definition is crucial, because there is a debate among authors whether consequences are part of an accountability process or not. However, as Bovens argues (and I agree), “the *possibility* of sanctions...makes the difference between non-committal provision of information and being held to account” (Ibid.). Within the discussion on police accountability, this becomes especially relevant when dealing with external accountability processes, such as civilian reviews, where several authors (*e.g.* Bayley, 1995; Chan, 1999) argue in favor of an advisory role for civilian review boards, without any power to impose sanctions.

While Bovens includes *consequences* in his definition of accountability, he explicitly excludes several other aspects that are often (implicitly) included in the concept. First, although transparency is an important prerequisite for accountability, it is not accountability itself, since it lacks scrutiny by a specific forum. Furthermore, accountability is retrospective, therefore responsiveness to, and participation by, stakeholders in the policy-making process does not constitute accountability. However, this does not mean that accountability may not provide valuable input for policy-making. (Bovens, 2007: p. 453)

### ***2.1.3. Four Indicators of Accountability***

In order to understand any accountability process, it is important to understand who is accountable to whom, about what and why (Bovens, 2007: pp. 454-455). For each component, there is no one clear answer, but rather a set of possible answers. The box below (*Box 1*) outlines the different possibilities for each component of any accountability relation as identified by Bovens. Bovens identifies at least five forums to hold actors accountable, each with its own demands and criteria. And every single one of these five forums may hold the actor accountable in a particular case, resulting in five different forms of accountability: Political accountability, legal accountability, administrative accountability, professional accountability and social accountability. Reversely, forums deal with *the problem of many hands*, or the question who should be held accountable. Here, Bovens identifies four different strategies for identifying the responsible actor: corporate accountability, hierarchical accountability, collective accountability<sup>5</sup> and individual accountability. Accountability will focus on one or several aspects of the actors conducts, ranging from legality to efficiency or professionalism. Although there are many different aspects an accountability process may focus on, and no overview would be complete, Bovens does attempt to provide a general classification of the types by differentiating between financial accountability processes, accountability processes focused on procedures, and accountability processes focused on outcome or product. Finally, the relationship between the actor and forum may be vertical, horizontal or diagonal. In the case of a vertical relationship, the forum “formally wields power over the actor” and therefore the actor is obliged to render account. Conversely, a horizontal relationship is defined by voluntary accountability by the actor, without any hierarchical relationship with the forum. This second category includes mutual accountability schemes between actors who cooperate on a basis of equality. When there is a diagonal accountability relationship between actor and forum, the forum has little or no direct power over the actor, since there is no direct hierarchical relationship. However, in these cases the forum will report to a third party, which does have direct power over the actor. (Bovens, 2007: pp. 455-460)

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<sup>5</sup> However, since collective accountability is “barely reconcilable with the legal and moral practices and intuitions current in modern Western democracies” (Bovens, 2007; p. 459), its applicability is limited to very specific circumstances.

*Box 1: Types of Accountability (Bovens, 2007: p. 461)*

Based on the nature of the forum

- Political accountability
- Legal accountability
- Administrative accountability
- Professional accountability
- Social accountability

Based on the nature of the actor

- Corporate accountability
- Hierarchical accountability
- Collective accountability
- Individual accountability

Based on the nature of the conduct

- Financial accountability
- Procedural accountability
- Product accountability

Based on the nature of the obligation

- Vertical accountability
- Diagonal accountability
- Horizontal accountability

#### ***2.1.4. The Importance of Accountability***

Before turning to the specific mechanisms designed to hold American police accountable, it is important to discuss the purpose of police accountability, because why is accountability so important? The most basic answer to that question is: to make sure the police abide by the law

and follow the rules that limit their power. Otherwise stated: the goal of accountability is “to withstand the ever-present tendency toward power concentration and abuse of powers in the executive power” (Bovens, 2007: p. 476). As the organization with the chief responsibility in maintaining public order and upholding the law, police officers have a name for crossing the legal boundaries of their own function. Reiner called this the “law of inevitable increment: whatever powers the police have they will exceed by a given margin” (2000: p. 173; *see also* Bayley, 1995; Walker, 2005). This goes beyond a simplistic idea of power hungry officers willingly abusing their power (although this definitely does occur). In many cases there is outside pressure on the police - from the public or from political leadership - to overstep their legal boundaries in order to effectively serve and protect (Walker, 2003; Reiner, 2000).

But this “control function” (Reiner, 2000: p. 176) is only one of the functions accountability mechanisms serve. Bovens for instance, mentions three direct functions of accountability - democratic control, the abovementioned countervailing of executive power, and improvement and learning - and two indirect functions, namely legitimacy and catharsis, or the ritualistic closure of a tragic period by “offering a platform for the victims to voice their grievances” (2007: p. 464). Reiner himself mentions four functions of accountability - with the other three being the constitutional function, the co-optive function, and the communication function<sup>6</sup>. Other authors provide similar answers, mostly stressing the importance of democratic control and legitimacy. For instance, Walker considers the main function of accountability to be the enhancement of “the integrity or legitimacy of the police in their treatment of individual citizens and demographic groups” (2003: p. 10), while Lister and Rowe emphasize the importance of democratic policing, beyond “simply ensuring... a democratic mandate” (Lister & Rowe, 2016: p. 5), referring to representative models ensuring human rights, civil liberties and the protection of minorities. Finally, Lister & Rowe also argue that proper accountability also increases the effectiveness of policing, since a higher level of trust and confidence increases the likelihood of the community cooperating with the police (2016: p. 5; *see also* Skogan, 2008: p. 32).

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<sup>6</sup> The constitutional function of accountability is the (symbolic) subordination of police institutions to democracy and the rules placed upon them by the constitution and the law, similar to Bovens’ democratic control function. The co-optive function refers to the adoption of the values accountability represents into the informal institutional culture. Finally, accountability functions as a signaling mechanism for problematic policies and behavior of officers (Bovens’ learning function). (Reiner, 2000: pp. 175-176)

## **2.2. Accountability of American Police**

### **2.2.1. Holding American Police Accountable: A historical Overview**

#### ***2.2.1.1 Internal Accountability***

Walker (2003; 2005) provides an historical overview of accountability reform efforts in the U.S., and the reform efforts largely coincide with the broader reform efforts new models of policing provided. Reiner connects the debate on police accountability with the larger debate on police powers, by stating that they both question “how to control police actions” (2000: p. 169). The first development to control police action was the professionalization movement, which, following the example of military organizational models, introduced a hierarchical organization form with expert leadership, the implementation of modern management strategies, the application of modern personnel standards, and strategies for rational decision making processes. The goal of these reforms was to minimize (political) corruption by breaking the strong ties between the police and political leadership, and they were successful in doing so. It stressed a crucial characteristic of professional policing, that the police had to be independent of politics<sup>7</sup>. The development of these ideas was far from specific to the American experience. In Britain for example, this view was central to the idea of constabulary independence (Newburn & Reiner, 2007: p. 921).

The accountability reforms enacted as part of the professionalization movement relied fully on internal administrative rulemaking procedures following hierarchical structures. The reforms denied the existence of police discretion and ignored the extent to which discretionary powers could be abused. Therefore administrative rulemaking procedures addressing questions of police use of authority were largely absent until the 1960’s, when external pressures forced police institutions to acknowledge the discretion of individual officers. A crucial role in this process was the Supreme Court of the United States (SCOTUS), which established “constitutional principles as a minimum standard for police work” and by doing so stimulated policy makers to rethink policies and “stimulated lasting reforms” (Walker, 2003: p. 17). Policymakers started to introduce

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<sup>7</sup> The idea of a separation between politics and police has later become a heavily criticized concept. Reiner for example (following the reasoning of Lustgarten) regards this separation as a false dichotomy (1995; *see also* Lister and Rowe, 2016). However, the professionalization movement was a response to the many instances where the police had become a private army of particular politicians.

internal rules and procedures confining and structuring discretion “by specifying what officers may and may not do in certain situations [and] ... by specifying the factors that an officer should consider in the proper exercise of discretion” (Walker, 2003: p. 15-16). However, as will be discussed later this chapter, there are several problems with internal accountability through rulemaking, and nowadays there is a basic consensus among scholars that internal accountability alone has proven to be insufficient (Walker, 2003; Reiner, 1995; Bayley, 1995; Chan, 1999), which has led to efforts to externalize accountability.

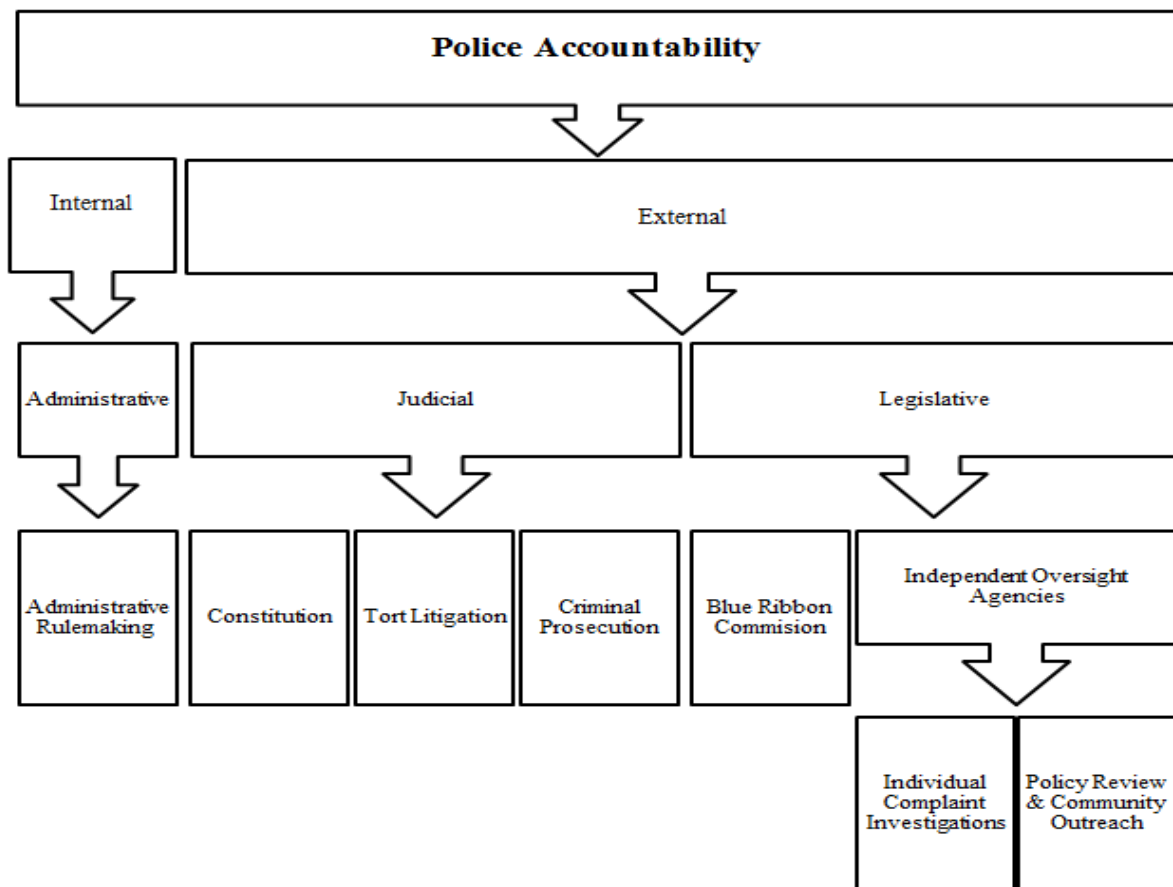
### ***2.2.1.2. External Accountability***

The first efforts of external accountability in the U.S. were attempted through the courts. As mentioned, the Supreme Court ruled on the constitutionality of police conduct. However, SCOTUS has no way to enforce compliance. Therefore advocates turned to other forms of judicial procedures. The first was the use of tort litigation, with the expectation that the financial pressure would force policymakers to reform existing policies and procedures. The second variety focused on the criminal prosecution of individual officers suspected of misconduct and abuse of power. These two forms of judicial accountability touch upon one of the fundamental questions with regards to police accountability: should police accountability focus on the individual or on the organization? Lister and Rowe specifically mention “that the legal system also provides a forum for scrutinising (*sic*) policing activity and an avenue of redress” (2016: p. 4), because as they themselves note, most authors tend to focus on “political and regulatory practices” (*ibid.*).

Alternatively, activists also used political means to force elected officials into implementing forms of external oversight, often after a specific scandal shed light onto police misconduct. Such pressure resulted either into “Blue Ribbon” commissions or into external oversight agencies. The first category consists of one-time commissions, consisting of experts, appointed to investigate the incident and, if necessary, provide recommendations for policy reform. The creation of permanent external oversight agencies is the second strategy to curb police misconduct through the legislature. Assuming the inherent inability of police departments to assure effective internal accountability procedures “as a result of both bureaucratic self-interest

and the power of the police subculture” (Walker, 2003: p. 22; *see also* Bayley, 1995; Skogan, 2008), independent agencies have been installed to investigate citizen complaints. In a small number of cases however, the external agency does not deal with individual complaints, in which case the individual complaint investigations remain to be a part of internal accountability procedures by the police department. Instead, the independent agencies will focus on policy review and community outreach (Walker, 2003; *see also* Bayley, 1995; Chan, 1999). The aim of the policy review is then to identify possible gaps or fallacies in policies, resulting in individual complaints. The second part, community outreach, focuses on informing the public about the complaint process, “to overcome the traditionally closed nature of citizen complaint procedures in police departments” (Walker, 2003: p. 28).

*Figure 1: Schematic Overview of Local Accountability Mechanisms in American Policing (inspired by Walker, 2003)*





These accountability mechanisms introduced over time have not replaced each other, but exist alongside one another, as becomes clear from the schematic overview provided in *figure 1*. Police accountability as described by Walker has become a myriad of different processes, all with a different goal and a different target. But *figure 1* is incomplete. The most recent development in American accountability reform has been the *federalization* of police accountability (Walker, 2003; Walker, 2012).

### **2.2.1.3. Federalization: The Consent Decree**

Walker (2003) refers to the development of federal involvement as a new paradigm for police accountability. The 1994 Crime Act has expanded the authority of the Department of Justice (DOJ) to intervene in local jurisdictions, the so-called *Pattern or Practice* authority or 42 USC § 14141 litigation, which authorizes the DOJ to investigate local and state police organizations if suspected of civil rights violations and abuse of power. If the outcome of the investigation shows a pattern of such behavior, the DOJ will ensure judicially accorded reforms in the form of consent decrees between the DOJ and the authorities in question. The reforms are based on ‘best practices’ within progressive police departments, and enforced through a consent decrees and memoranda of understanding agreed upon by the DOJ and individual police departments. The *Pattern or Practice* authority is a turning point for police accountability, because it provides the federal government with the power to directly intervene in traditionally local policing policies and enforce reforms (Walker, 2003).

While the consent decrees themselves differ from police department to police department, their content is grounded in four ‘best practices’: “(a) a comprehensive use-of-force reporting system, (b) an open and accessible citizen complaint system, (c) an early intervention (or warning) system to identify potential "problem" officers, and (d) the collection of data on traffic stops for the purpose of curbing racial profiling” (Walker, 2003: p. 7). These best practices are then translated into a comprehensive accountability program, where use-of-force reports, citizen complaints and traffic stop data are used as indicators for problematic behavior, and “become the raw material for an early intervention (EI) system” (Walker, 2003: p. 29). If the information is systematically collected and properly analyzed, it provides important insights in the performance

of police departments, and serves as a basis for official intervention, which “represents a proactive approach to reducing officer misconduct that is fundamentally different from the traditional reactive approach” (Walker, 2003: p. 29).

The consent decree itself is a form of *external* accountability. It is an external forum investigating the actor and consequences are enforced through the judiciary. However, the goal of the consent decree is to ensure the implementation of new *internal* accountability policies. Building on the idea that the majority of incidents are the results of actions by a small minority of problematic officers or otherwise the result of poorly designed policies, the goal of a consent decree is to implement systems with the capacity to identify these problematic officers and failing policies (Walker, 2003). While the approval of the *Pattern or Practice* authority significantly expands federal influence over local policies, it does not provide the federal government with any direct power over the local departments, since only the judiciary and an independently installed monitor can enforce compliance with the reforms agreed upon.

## **2.2.2. The Limits of Police Accountability Mechanisms**

### ***2.2.2.1. Issues of Accountability***

Despite the importance of proper accountability mechanisms, it has been notoriously difficult to both design and implement comprehensive accountability systems. As mentioned, there is a consensus among authors that internal accountability alone provides insufficient accountability for several reasons. First, the basic problem with all forms of administrative rulemaking is the differences between the ‘paper reality’ and the actual reality on the streets. Reiner provides two reasons for the inevitability of police discretion, regardless of the desirability of police discretion. First, it is impossible to have enough resources to always enforce every law, which means enforcement will also inevitably require prioritization of certain laws over others. Furthermore, “even the most precisely worded rule requires interpretation in concrete situations” (2000: p. 169). For accountability through administrative rulemaking to function properly, not only should the rules be so precisely worded that they cover as many real-life situations as possible, there is also the need of a form of control by senior officials, which can only be done by extensive reporting on any incident officers have met. In reality, police policies generally have no or too

generic policies with regards to very important aspects of police work, which leads to vague or unclear instruction for street-level officers (Reiner, 2000; Walker, 2003). Furthermore, the extensive requirement of reporting to senior officials may lead to bureaucratism, where officers spend such a significant portion of their time on paper work that it directly affects the performance of departments and individual officers (Chan, 1999). But “finally, and most importantly, the existence of a written rule hardly guarantees that it is implemented as intended” (Walker, 2003: p. 17), a recurring problem with almost any form of accountability.

While judicial review theoretically serves as a strong control mechanism for ensuring compliance with the law, in practice it has been extremely difficult to use the judiciary for police accountability. The Supreme Court has, as mentioned, played a crucial role in ensuring that policies align with constitutional and human rights standards. However, the Supreme Court’s function is limited to the constitutionality of policies, and has no mechanism for enforcing their rulings. With regards to tort litigation and criminal prosecution of officers, a wide variety of problems has been identified, all-in-all, there is little evidence to suggest tort litigation has had any success in forcing policy makers to reform. Similar to tort litigation, the effects of criminal prosecution have been very limited. The main reason is the great difficulty in prosecuting police officers. Local prosecutors often lack the will to do so, and federal prosecutors lack the resources. Furthermore, to prove that an officer had criminal intent is extremely difficult, and judges and juries are likely to take the word of police officers as facts and to believe police action to be justified (Walker, 2003: p. 20). Also, there is little evidence to support the claim of deterrence by prosecution. Finally, Lister and Rowe point out that “the resources, and cultural and social capital, required are not equally available to all” (Lister & Rowe, 2016: p. 4), which is especially the case with exactly those social groups most likely to be exposed to police misconduct.

So, both administrative accountability and judicial review are problematic. Unfortunately, external review has been shown to have problems as well. First, temporary “Blue Ribbon” commissions have in most cases have little or no impact, because they have no means to implement their recommendations. For successful implementation of any recommendation, the police department itself has to be willing to adopt the recommendations, which generally only occurs if the scandal itself resulted in the appointment of a new police chief, and once public attention has faded away, the necessity for reforms fades as well.

Civilian review agencies can be designed in so many different ways that it is difficult to provide a general critique. First, there is the distinction between agencies focusing on individual complaints and agencies focusing on policy review. With regards to the individual complaints, agencies have had a myriad of problems:

“Many external oversight agencies have been weak, ineffective, poorly led, and have not provided either satisfactory service to individual complainants or had any scientifically measurable effect on police misconduct” (Walker, 2003: pp. 22-23).

Some agencies lack the authority necessary for their task, others lack the resources, some have been poorly managed, and some fail “because of a lack of political support, disinterest by police management, or staunch opposition from the local police union” (Walker, 2003: pp. 23-24). Furthermore, several authors have argued that the investigation of individual complaints has little impact on the overall quality of police services. With the vast majority of complaints resulting in a ‘he said - she said’ argument, independent agencies are as unlikely to sustain a complaint against officers, and even if they did, there is little evidence that this would have a deterrent effect, similarly to criminal prosecution efforts. Furthermore, independent agencies, like the Blue Ribbon Commissions, only have advisory power without the means to impose disciplinary action. Also, dealing with individual complaints leads to scapegoating individual officers, rather than addressing systemic problems resulting from the organizational culture (Walker, 2003; Bayley, 1995). Comparable to an increase of administrative rulemaking, external overview could lead to bureaucratism, which is even more time-consuming and expensive than internal accountability mechanisms would be (Bayley, 1995; Chan, 1999). Finally, Chan points to the creation of special divisions specifically to deal with accountability requirements. In these cases, the new division is nothing more than a marketing tool to show compliance with new requirements, while the department as a whole, in terms of policies and organizational culture continue with their conduct unaffected by new requirements (Chan, 1999: p. 256).

For these reasons, authors like Bayley, Chan and Walker, have argued for external review agencies focusing on policy review instead. But, equal to individual review agencies and temporary commissions, they have no means of enforcing implementations. This is justified by

Bayley, who argues that the task of civilian review is to provide an informed analysis for citizens to guide their political decisions, but “if a community’s elected leaders choose to keep irresponsible police leaders, they may” (Bayley, 1995: p. 108). Walker provides a similar argument, stating that even if recommendations are not implemented, they serve an important role, since it provides outside scrutiny and transparency in the functioning of the police department, resulting in a more “orderly process for public debate” (Walker, 2003: p. 26). Furthermore, by establishing the habit of regular outside scrutiny, the policy review process supposedly has the potential to transform the organizational culture in the long run, since being under constant scrutiny could force the department to structurally behave in a more professional manner. However, if one uses Bovens’ definition of accountability, such a form of external policy review agencies does not actually count as a true accountability mechanism, since there are no possible direct consequences.

#### ***2.2.2.2. The Limits of The Consent Decree***

It is clear from his works that Walker (2003; 2005) is a strong proponent of the ‘best practices’ that make up a consent decree. In his view, the implementation of use of force reporting policies, open and accessible citizen complaint systems, and early intervention systems collectively represent the future of police accountability (Walker, 2005). Nonetheless, Walker identifies at least four potential issues with the consent decrees. The first problem is that the consent decrees are ultimately nothing more than “formal administrative arrangements”, which means they are as effective as they are operationalized. Official implementation is completely meaningless if they are not properly executed. “The administration of such policies over time is one of the key components in shaping the organizational culture of a police department” (Walker, 2003: p.48), so in order for the consent decree to be effective, the reforms must be fully enforced over long periods of time. Walker himself identified several cases where the implementation of, for example, an EI system was mostly a theoretical endeavor, since the EI system was either ineffective or barely operational.

Secondly, Walker points out that the consent decrees already in place showed mixed results in terms of implementation and application. In some cases, the department was in

compliance with most mandated reforms, but in other cases, the department had missed every single deadline for mandated reforms, or the independent monitors met institutional opposition to reforms every step of the way (Walker, 2003: p.49).

A third concern Walker has about consent decrees are the costs associated with reforms. The mandated reforms in a consent decree require “dramatic short-term organizational changes” (Walker, 2003: p.49), which in turn requires a heavy investment. While some cities may be able to carry the financial burden of the reforms, many cities would be unable to bear the costs of the necessary reforms, which severely impacts the overall effectiveness of the reforms.

Finally, Walker identifies a fundamental problem with the substance of consent decrees: the lack of whistleblower protection. This aspect missing in consent decrees bothers Walker for two reasons in particular. First, because police departments lack procedures rewarding good officers and good behavior. Second, whistleblower protection could potentially help solve the lasting issues with the police subculture and the associated code of silence. While whistleblower protections laws exist on the federal and state level, their effectiveness is doubtful, since “the burden of enforcing these laws falls heavily on the individual...who faces organizational hostility, the enmity of fellow workers, substantial legal costs, a long and drawn out struggle, and a very uncertain outcome” (Walker, 2003: p. 50).

### ***2.2.2.3. Organizational Culture and the Police Subculture***

An important component of studies into police reform and police accountability has been the influence of the *organizational culture* and *the police subculture*. Previous studies into the effectiveness of police accountability (Bayley, 1995; Chan, 1999) have shown how both the organizational culture and the police subculture may lead to officers from every rank opposing accountability efforts and thwarting investigations into possible misconduct. Whether officers are looking out for one another, whether they fear becoming subject of an investigation themselves, or whether they fear being labelled a ‘rat’ or traitor by their colleagues, getting officers to cooperate with accountability investigations into one of their peers has proven to be notoriously difficult. For senior officials, key motives for undermining investigations into their department are generally related to the name and reputation of the department (Chan, 1999).

It is important to differentiate between the organizational culture and the *police officer subculture*. The *police officer subculture* specifically refers to a belief system that is shared by most police officers and shapes the attitude and behavior of police officers in various ways. It stems from the traditional homogeneity of the police force, which consisted of “white males, with limited education, conservative political values, and a deep cynicism about people, the criminal justice system, and their own departments” (Walker, 2012: p. 69). This homogeneity of identity and ideas resulted in a collective belief-system, consisting of several core beliefs. The first is the belief that the police is the last stronghold between order and chaos. If they disappear, crime and disorder will rule society. Therefore they must use the tools they are given, arrest and force, to make sure order is maintained. On top of that, because they are that last line of defense, disrespect towards them undermines the respect for the law. “People with a ‘bad attitude’ are seen not only as threatening to police individually, but as constituting a symbolic attack on law itself” (Bayley, 1995: p. 101). The third factor in their belief system is the contrast between their responsibility to protect society and their limited capabilities to do so. Ultimately, it is the justice system that punishes the wrongdoer, and all too often the wrongdoer ultimately gets away. This leads to a notion among officers that they should sometimes take care of everything themselves, instead of waiting for the justice system to maybe do its job. And as long as their victim is relatively powerless, and their abuse is “not grossly excessive” (Bayley, 1995: p. 102), they can probably get away with it.

Walker argues that the idea of the *police subculture* is “enveloped in myths and stereotypes” (Walker, 2012: p. 68), and that the increased diversification of police forces are reason to question the notion of the police subculture in general, and that variations between departments in the subculture are significant. Nonetheless, the subculture forms a significant obstacle for reform.

But the *police officer subculture* is only part of the larger organizational culture within any department, and the organizational culture at large has also proven to be a significant obstacle for change. In Skogan’s paper on the difficulties of police reform, no less than five of the eleven causes for reform failure were forms of resistance from within the organization or resistance by the union (Skogan, 2008). In general terms, the resistance is the result of new policies forcing officers to change their ways, force more rules upon them and increasing the scope of their work, which they feel undermines the effectiveness of their work. An additional

problem is the lack of trust between rank and file officers and high-level officials. Management regularly imposes rules upon the officers (Skogan, 2008), because of a lack of trust in their conduct, while the street-level officers shield their actions from senior officials, making sure they “cover their ass” and look out for each other (Reiner, 2000). Somewhat contradictory, while internally officers want to shield their actions from superiors, it is often management who undermines external review efforts. It undermines the public image of the police and leads to a protective stance in order to protect their good name (Bayley, 1995; Reiner, 2000). Chan’s review of the corruption scandal in Australia even showed that rather than supporting and encouraging officers to report misconduct, senior officials discouraged officers to report on their colleagues, and often it was the complainant who became subject of investigations or whose career was negatively impacted as a result of his or her actions. The subjects of the original complaints on the contrary were protected in several ways, either by deviant behavior towards the investigation, or by warning the subject and leaking information (Chan, 1999: p. 261).

The importance of police culture on the behavior of officers is difficult to understate. Studies on policing have shown that officer behavior is influenced more by the organizational context than by any individual background, including race and education (Bayley, 1995). It is for exactly this reason that almost any author (*see amongst others* Bayley, 1995; Chan, 1999; Reiner, 2000; Walker, 2003; Walker, 2012; Lister & Rowe), considers change of the culture within any department to be the main concern of accountability. And the crux in effective accountability reform is to change the idea that it is the police versus the world, and that officers have to protect each other and their department’s good name, by hiding misconduct and undermining accountability.

### **2.2.3 The Use of Force**

A fundamental question for accountability after a deadly police shooting is whether the use of force was legitimate or excessive. Police officers have the power to use force as long as the use of force is legitimate and reasonable. The legal basis for the use of force by police officers is governed by the Fourth Amendment’s reasonableness standard. In the 1989 *Graham v. Connor* decision, the Supreme Court ruled that:



“Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake. The reasonableness of a particular use of force is based on the totality of the circumstances and “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (DOJ CRD & USDA North Ohio, 2014: 12).

The Sixth Circuit court subsequently identified three key factors judges should consider when determining whether the use of force was reasonable: the severity of the crime; the threat-level posed by the suspect to the officers or others; and whether the suspect resisted or attempted to escape arrest (DOJ CRD & USDA North Ohio: p.13). When the case deals specifically with lethal force, courts have upheld slightly stricter rulings, arguing that deadly force is only permissible if the “officer has probable cause to believe that a suspect poses an *immediate* threat of serious physical harm to the officer or another person” (DOJ CRD & USDA North Ohio, 2014: p.13). If the suspect is “unarmed or otherwise non-dangerous”, or when the “suspect has a weapon, but the officer has no reasonable belief that the suspect poses a danger of serious physical harm” (DOJ CRD & USDA North Ohio, 2014: p.13), the use of deadly force is not justified.

The key issues with these rulings are the notion of the ‘perspective of a reasonable officer’ and the notion that the officer must have ‘probable cause to believe’. Because the court has ruled that one cannot judge with 20/20 hindsight, the actual danger posed by the suspect is largely irrelevant for the judgement of a deadly force incident. What matters is whether the officer *believed* that the suspect posed a threat. The possible ramifications these ruling could have for the indictment of police officers after the use of excessive force, were clear among scholars and authors warned against a too lenient application of the *Graham v. Connor* ruling. Brown calls on courts to “resist the temptation to revert to a substantive due process inquiry under the guise of applying *Graham*” (1991: p.1286). She acknowledges that “only when the defendant’s conduct is improperly motivated” courts are willing to uphold a plaintiff’s claim, but she argues courts should be “willing to hold that a well-intentioned but objectively unreasonable use of force

violates the fourth amendment” (Brown, 1991: p. 1286). 25 years later, Brown’s fears seem to have come true. As Jacob concludes in 2016:

“Complete reliance on the ‘objective reasonableness’ standard with deferential posture toward police judgments in deadly force cases is outmoded and does not afford proper respect for the sanctity of human life by asking if there is anything that could be done differently to avoid the loss of life” (Jacob, 2016: p. 359).

### **2.3. Conclusion and Situation of the Problem**

The definition of accountability provided by Mark Bovens (2007) will be used as the working definition of accountability for this thesis. Bovens defined accountability as “*a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences*” (Bovens, 2007: p. 450).

From this definition four key components of accountability can be derived. Each accountability mechanism requires an *actor* that is being investigated, a *forum* performing the investigation, and an inquiry by the forum into the conduct with an explanation of the conduct by the actor. After the inquiry has been concluded, the forum has the power to judge the conduct (*justification*) and to impose consequences (*outcome*) consistent with the judgement. It is important to note here that Bovens himself only poses four questions (by who, to whom,

Bovens (2007) also outlines the functions of accountability and he identifies three direct functions of accountability. First, accountability ensures that the public institutions abide by the law and follow internal procedures. Second, by linking public institutions to “the democratic chain of delegation” (Bovens, 2007: p. 464) accountability provides the public with a level of democratic control over public institutions. Third, accountability functions as a learning mechanism and provides valuable lessons for future policies. On top of these three direct functions of accountability, Bovens (2007) also identifies two indirect functions of accountability: legitimacy and catharsis.

While Bovens provides a clear definition of accountability, Walker (2003) offers a framework for categorizing accountability mechanisms with regards to police organizations in the U.S. Most importantly, Walker separates internal from external accountability. In Walker's view, internal accountability includes all administrative accountability procedures that function completely within the police organization, where internal reporting procedures would follow hierarchical structures, automatically leading to internal accountability towards one's superior officer (Walker, 2003: p. 13). When applying the definition of accountability to this categorization, internal accountability is accountability where both the actor and the forum are part of the organization itself. In contrast, external accountability refers to accountability with the forum being organizationally independent from the actor (Walker, 2003: p. 17). For Walker, these forums can either be judicial or legislative, where legislative accountability refers to the installation of one-time commissions – charged with investigating a particular incident - or the installation of permanent external oversight agencies – either to investigate individual complaints or to focus on policy review and community outreach (Walker, 2003: pp. 21-28).

This theoretical framework will be applied to investigate accountability in cases where use of force by the U.S. police has had a deadly outcome. To judge the legitimacy of the use of force, the Supreme Court has defined the standard of 'objective reasonableness'. But the standard of 'objective reasonableness' has become a highly problematic standard for judging the use of deadly force by police officers (Jacob, 2016) and public debates have swelled over whether America police has become unaccountable in cases where police force results in the death of a person. However, just because the standard for judging the legality of a policeman's conduct is problematic, does not necessarily mean that there is no accountability or that the *accountability mechanisms* are ineffective. Bovens (2007) offers objective criteria to judge whether there are accountability mechanisms in place, while Walker (2003) provides a schematic overview of the various possible accountability mechanisms that one could identify in the United States.

The problem this thesis addresses is whether these theories adequately analyze accountability when applied to the use of deadly force. By applying Bovens (2007) and Walker (2003) to cases where police officers used deadly force in a confrontation with a civilian, this thesis aims to add to the body of literature on police accountability and help the public debate on

the use of force move forward. Understanding the functioning of accountability mechanisms in such a case helps identify problems in theoretical notions of accountability, as well as the identification of problems in the practical application of accountability.

## 3. Methodology

### 3.1. Research Question

The aim of this research is to expand our understanding of the concept of accountability, by testing Bovens (2007) theory on accountability in- a specific empirical setting. As discussed in the previous chapter, Bovens (2007) has provided a theoretical framework for understanding accountability mechanisms, while Walker (2003) developed a structural framework for police accountability in the United States. By combining these two theoretical frameworks into one innovative framework with operationalization and indicators, and then applying this new framework in an empirical setting potential problems in Bovens' definition of accountability and Walker's accountability structure for the police in America can be identified - which makes this research a theory-testing one - an explanatory theory testing research question (RQ) was developed:

*How can theories of Bovens (2007) and Walker (2003) on accountability explain the deadly police shooting of Tamir Rice?*

In order to provide an answer to this question, it is necessary to answer a set of sub questions:

1. *What occurred during and after the shooting of Tamir Rice?*
2. *Which internal accountability mechanisms are set in motion after the shooting and when?*
3. *Which external accountability mechanisms are set in motion after the shooting and when?*

#### **3.1.1. The Different Stages of the Research**

The research for this thesis has been divided into two stages. The first stage is based entirely on the structural framework distilled from Walker (*figure 1*). In chapter four, all accountability mechanisms identified in the case will be discussed in narrated form, based on the structure of Walker. Therefore the chapter will discuss accountability mechanisms identified by Walker as external in section 4.2, and accountability mechanisms identified by Walker as internal are

discussed in section 4.3. Section 4.4. discusses accountability mechanisms that are excluded from Walker's framework.

The second stage of the research is the conduction of a systematic analysis of all mechanisms on the basis the formal requirements for accountability as distilled from the definition of accountability by Bovens.

## **3.2. Operationalization**

Since the aim of this research is testing the theories of Bovens (2007) and Walker (2003), it is these two frameworks that will function as the basis for the operationalization scheme. For each element of Walker's structural framework, the four elements distilled from Bovens' definition will be applied in order to understand the reality of accountability in the selected case. The in-depth analysis of identified accountability mechanisms will be done through the questions drafted by Bovens' for each element: accountability by whom, to whom, on what conduct, and with what obligation (Bovens. 2007: p. 461). *Figure 2* provides the operationalization scheme for analyzing the accountability mechanisms.

Walker's structural framework is represented in *figure 2* by box 1 and 2 in the second column, indicating the distinction made by Walker between internal and external accountability. The boxes in the third and fourth column (1.1., 1.2., 1.3., 1.4., etc.) represent the formal requirements distilled from Bovens. Each accountability mechanism will be analyzed on the basis of the four characteristics of accountability: which actor is being questioned: which forum is calling the conduct into question and what are its powers; what is the explanation of the conduct by the actor in question; and what is the outcome of the procedure and how is that justified by the forum? The outcome of this analysis will be presented at the beginning of each section, by submitting a completed table as exemplified by *Table 1*.

Figure 2: Operationalization Scheme 1

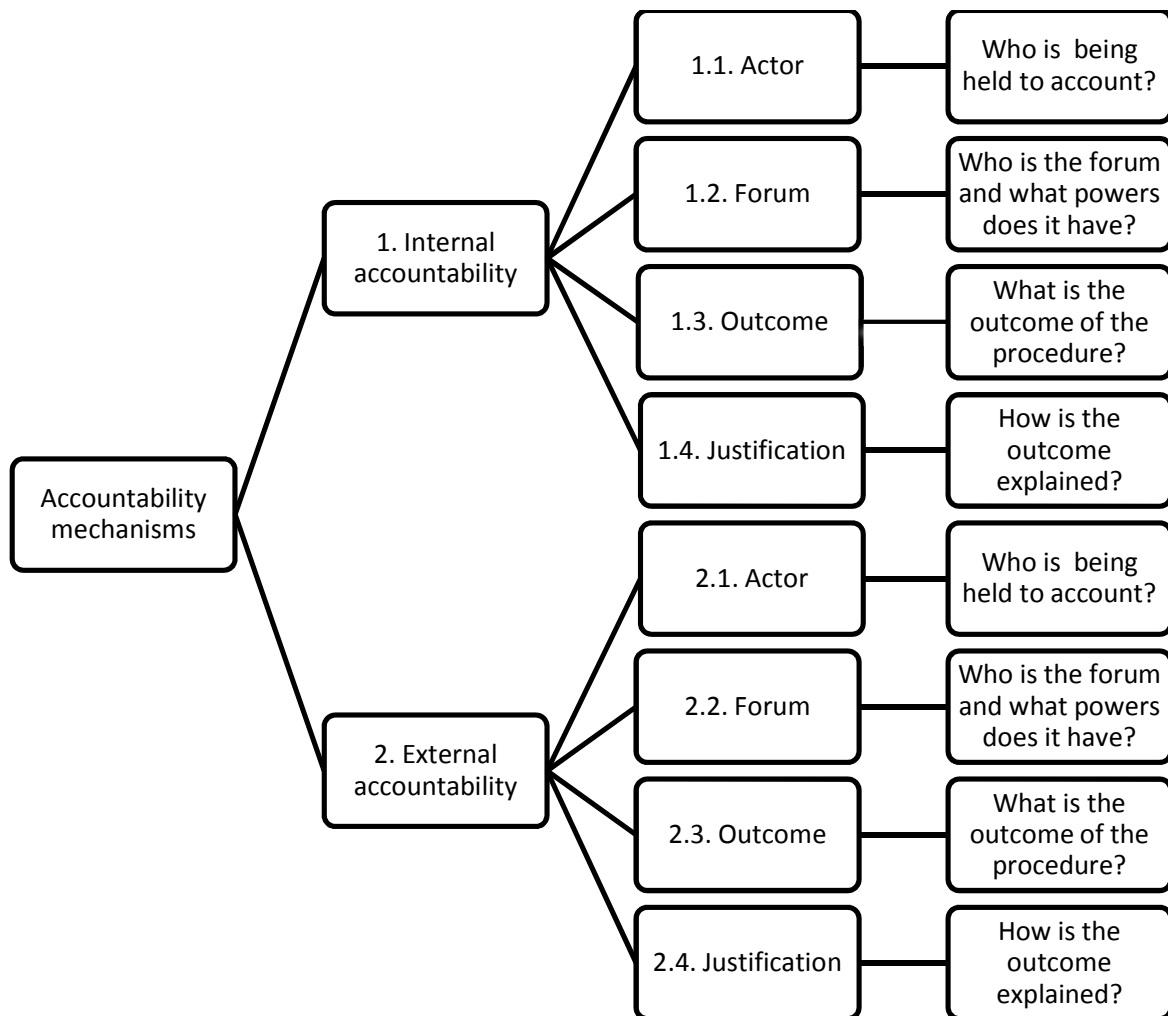


Table 1: Bovens Applied to the Accountability Mechanism

Indicators	Findings
1.1. Actor	<i>Who is being held to account?</i>
1.2. Forum	<i>Who is the forum and what powers does it have?</i>
1.3. Outcome	<i>What is the outcome of the procedure?</i>
1.4. Justification	<i>How is the outcome explained?</i>

### 3.3. Research Design

#### 3.3.1. Single Case Study Design

This research focuses on an empirical setting where accountability mechanisms can be observed in order to test theoretical concepts of accountability. For understanding accountability in practice it is necessary to understand the uniqueness of each incident and the complex conditions shaping the context of the case. Yin (2012) defines a case study as “*an empirical inquiry about a contemporary phenomenon (e.g. a “case”), set within its real-world context – especially when the boundaries between phenomenon and context are not clearly evident*” (Yin, 2012: p. 4). The practice of accountability within the police can best be understood by studying the phenomenon through contemporary events over which the researcher has no control. To explain both the process and the outcome of accountability *in its context* requires consideration of a single case in its entirety, the trigger incident itself and every aspect of its aftermath, in a holistic approach using a variety of sources

An in-depth study of a single case provides the opportunity to test theoretical notions on the functioning of accountability within its (American) context, while a comparative study would be more suitable for understanding the differences in accountability in different contexts. The choice for a single case study rather than a comparative study follows from Yin’s argument on ‘analytic generalization’, where the function of a case study is similar to the function of an experiment. The goal of this study is *not* to generalize findings on accountability in the selected case to other cases of police shootings, but rather to test theoretical notions on accountability in a practical context (Swanborn, 1994: 326-327; *see also* Yin, 2009). It does not offer conclusions on the correctness of the outcome of accountability mechanisms. In terms of external validity, the conclusions of this case are not applicable to any case other than the one discussed in this thesis.

The shooting of Tamir Rice has been chosen from a preselected list of deadly police use of force incidents. This list has been included in Appendix A. From this list, the case of Tamir Rice has not been chosen at random, but precisely because of the context of its case. While deadly shootings in itself are extreme situations for accountability, the case of Tamir Rice is an outlier even within the sample-pool of deadly shootings. The shooting of a suspect within seconds after arrival, where the victim turns out to be a 12-year-old who in hindsight posed no



serious threat to the officers or the environment, is an extreme case even as compared to other deadly shooting. Furthermore, the shooting of Tamir Rice occurred in the midst of the grand jury decisions not to indict the officers in the cases of Michael Brown in Ferguson, Missouri, and Eric Garner in New York. The shooting was therefore immediately connected to those cases and BLM in general. These circumstances would suggest that accountability in this case was applied with scrutiny - regardless of the outcome - which in turn justifies the selection of this particular case for understanding the various existent forms of accountability.

The design of this thesis is both transparent and replicable. All sources used for case-building and analysis are publicly available and can be obtained online. The unit of analysis is the Tamir Rice case. The unit of observation is the collective body of sources collected on the case with regard to the way the Cleveland Division of Police handled this case, which includes media sources, policy documents and governmental reports.

### **3.3.2. Presentation of the Case**

*November 22, 2014.* Near the Cudell Recreation Center a 12-year-old boy was playing with a toy gun, occasionally pointing the gun at people walking by. A witness decided to call 911, telling the call-taker that “the guy keep pulling it in and out of its pants. It is probably fake, but you know what, it is scaring the shit out of me” (McGinty, 2015; Los Angeles Times, 2014). A couple of minutes later, two police officers, Timothy Loehmann and Frank Garmback, arrived at the scene, driving the car directly next to the gazebo where the boy sat, and within two seconds after getting out of the car officer Loehmann pulled his gun and shot the boy.

In the 911-call, the witness mentions twice that the gun is probably fake. With regards to the appearance, the witness starts by describing Tamir’s attire, but is interrupted by the call-taker who repeatedly asks about the suspect’s race. The caller mentions that he thinks Tamir is “probably a juvenile” (Los Angeles Times, 2014; McGinty, 2015), but the call-taker does not remark his observation. The witness’ remarks with regards to Tamir’s age and the notion that the gun is “probably fake” are missing in the follow-up between the dispatcher and the police officers. Instead the officers respond to a Code 1 call from the dispatcher, who stated that a black

male was sitting on the swings in the park, continuously pulling the gun out of his pants and pointing it at people (CNN, 2014; McGinty, 2015).

Officer Garmback was driving the patrol car with officer Loehmann in the passenger seat. When they arrived at the scene, Garmback did not park the car at a distance in order to assess the situation. Instead, Garmback drove the patrol car onto the grass patch directly next to the gazebo where Tamir Rice had just gotten up from a park bench. When officer Loehmann stepped out of the car, the distance between him and Tamir Rice was no more than one or two meter. Rice reaches for his waistband, where he kept the gun and Loehmann immediately shot Rice, who collapsed at the spot. According to the official reading, the two officers ordered Rice to raise his hands, but he would have refused and reached for his gun instead, which led to the officers firing two shots, of which one struck Rice in the abdomen (McGinty, 2015). After the shooting, Loehmann took cover behind the trunk of the car, while officer Garmback took a similar position behind the hood of the car. Then the shots fired call was made, stating:

“Radio, um, shots fired! Male down. Um, black male, maybe 20 [years old]. Black revolver - black handgun. Send EMS this way. And a road boss” (McGinty, 2015).

After about 40 seconds, officer Garmback slowly approached Rice and kicked the gun away, which at that point laid next to Tamir’s body, while Loehmann kept his position behind the car with the gun drawn. After about two minutes, Tamir Rice’s 14-year-old sister came rushing to the scene, where she was held back by officer Garmback, who restrained her and held her down to the ground before he, with the help of off-duty officer Cunningham<sup>8</sup>, handcuffed the girl and placed her in the back of the car (McCormack, 2015). After a bit more than three minutes, a FBI Special Agent arrived at the scene. As a trained paramedic, he is the first to provide first-aid to Rice, treating his bullet wound in the abdomen. An ambulance arrived about ten minutes later and Tamir Rice was then rushed to the MetroHealth Medical Center, where Tamir Rice passed away at 2:30 A.M. the next day (Mayor Frank Jackson in *Cleveland.com*, November 24, 2014).

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<sup>8</sup> Officer Cunningham did not respond to the call, nor was he present during the shooting. The officer was off-duty and was working at the Recreation Center. According to McGinty (2015), he followed Rice’s sister when she ran out of the Recreation Center towards the crime scene.

### **3.3.3. Possible Pitfalls**

While the case study design is the preferred design for his study, Swanborn (1998) warns about generalization based on a single case study. Because a case study focuses on a real situation within its context, the number of variables affecting the outcome are seemingly endless, and there is always the chance that a case is an outlier or coincidentally fits the theoretical model (Swanborn, 1998: p. 327). Applying this argument to the methodological framework of this thesis highlights several potential problems. First, the case selection has been based on the fact that the incident had a deadly outcome. However, because the incident had a deadly outcome, it also received a large (disproportionate) amount of public attention, which resulted in a high level of public scrutiny. Therefore, public officials are also more likely to apply accountability with particular scrutiny, or at least are likely to appear to apply accountability with particular scrutiny. If the result of the case had not been the death of the 12-year-old, it is questionable whether all the accountability mechanisms traced in this case would have been activated. This is especially relevant in this case, because of the context of the BLM movement and the simple fact that the victim was a child.

Second, as has been mentioned before, the goal of this research is not to judge whether the shooting was justified. However, normative judgments on the justifications offered for the incident have to be made in order to assess the accountability mechanisms. This makes the research and the conclusions vulnerable for bias based on the case selection. It is crucial, but difficult to differentiate between the facts of the case and opinions on the case, whether it is the opinion of this author or that of others. This is also related to a third possible pitfall: a lack of detail. Because this study focuses on a single case, it is crucial that the case selected is studied in whole. If elements of the case are missing, the conclusion of the research is utterly useless, because the case is then by definition not fully discussed and the research therefore incomplete.

### **3.4. Methods: Triangulation of Methods**

The triangulation of methods for this thesis consists of document analysis, media analysis and desk top research. Ideally, interviews would have provided a valuable additional source for

understanding the various perspectives on the case, but time constraints, financial limits and the physical distance between the unit of analysis and the researcher created a barrier which made it impossible to make proper arrangements for interviews.

### **3.4.1. Data Gathering**

The data for the media analysis is collected online by using key search words in a variety of search engines: Google, Factiva, YouTube and the archives of a variety of local, national and international news media<sup>9</sup>. The following key words have been used in these search engines alone and in combination with one another: *Tamir, Rice, accountability, shooting, Cleveland, police, officer, Loehmann, 911-operator*. However, as is often the case online, one source links to another one, which provides valuable new sources as well. Collectively, this process provided a wide variety of secondary written and video sources from newspapers, TV-stations and online journalists.

The primary importance of the media analysis is to understand the case and the timeline. It also provided valuable starting points for further research to primary sources for the document analysis. Key moments in the timeline represented in the media are those moments where specific accountability mechanisms have either been started or finished. For example, prosecution of a police officer is highlighted in the media at three moments: when the prosecution starts, at key moments in the court, and after the conclusion of the prosecution. Each of these moments in the timeline is either documented by the organizations or individuals responsible, or follows the publication of documents. To return to the example, the start of prosecution follows the publication of an investigative report, key moments in court are documented by the court, and the outcome of the case is documented by the court. These primary sources consist again of both written and video sources. The written sources are documents and presentations outlining official procedures and presenting the findings of specific procedures. In one case, there was a public Dropbox (named ‘Police Presentation’) created by the City of Cleveland, in which they had published all the reports related to the internal investigation. This Dropbox was accessed through a link included in the press release (Ciaccia and Williams, 2017). The video sources are movies

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<sup>9</sup> Primarily Cleveland.com, the New York Times, the Washington Post and the Guardian.

providing a full or partial view of certain moments in the timeline of the case. For example, uncut videos of specific press conferences have been fully uploaded on YouTube, as well as long segments of an organized public forum. These primary sources have been collected through search engines and from the websites of the organization involved in the procedures and responsible for the publication of the documents in question. Some documents officially released, as is the case with the investigative report of the County Sheriff were originally released for publication, but can no longer be found on the prosecutor's website. However, in those instances, media websites had also published the full report as released. Especially *Cleveland.com* and *The Washington Post* often posted the full publication on their own website.

Finally, for the collection of sources for the desk top research, this research relied mostly on the catalogue of Leiden University, although some sources have been obtained through Google Scholar.

### **3.4.2. Data Exploitation**

In order to ensure a complete overview of the case in its entirety, data exploitation started with creating a timeline and including all the sources. After the incident was fully covered by the timeline, individual sources were analyzed. For both media analysis and document analysis, this research applied a system of color coding for the various indicators. Every *actor* encountered in the documents was marked with a yellow marker, while every *forum* encountered was marked with a red marker. Whenever a source mentioned some form of justification for the conduct of an actor, it was marked with green, while consequences (or the lack of) were marked with blue. However, this method for exploiting the data was only applicable to the written sources. Therefore video sources, if their content was relevant for the analysis, were summarized (not fully transcribed), after which the same system of coding was applied to the summary. Ultimately the data derived from the sources will be analyzed using the operationalization scheme presented in section 3.2.

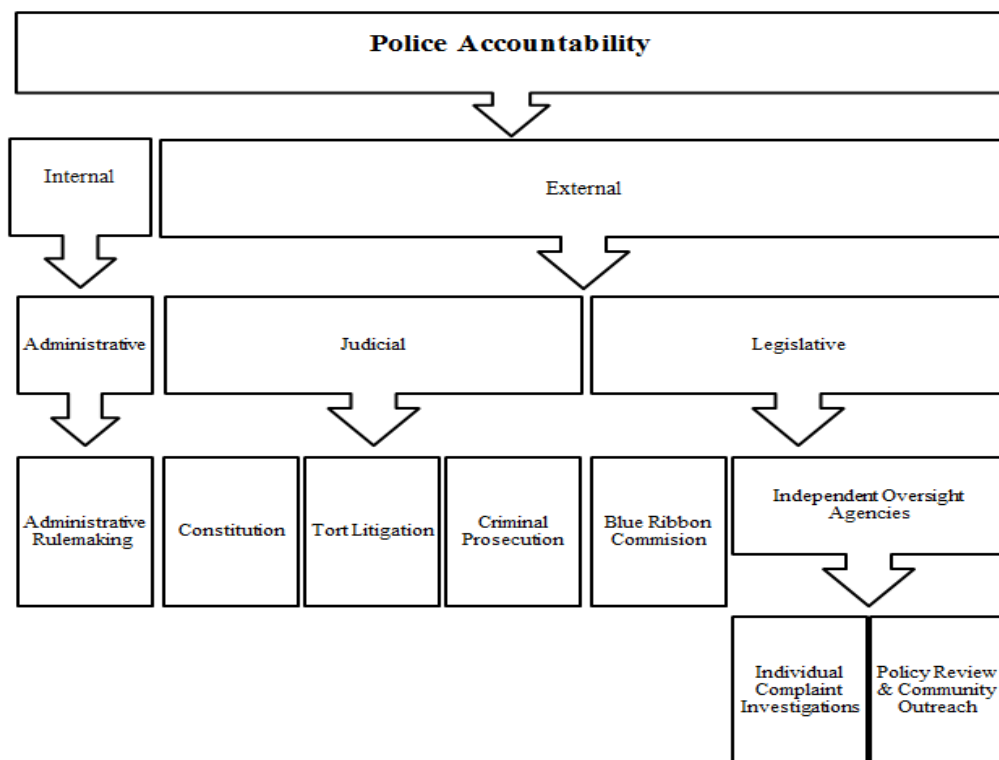
Internal validity is achieved by identifying each element of Bovens' definition for the individual mechanisms in place. If there are mechanisms that fail to have all four elements, one could question whether it truly concerns an accountability mechanism, or whether Bovens' definition is

truly comprehensive. Reversely, if all four elements are identified in a mechanism that is not included in Walker's structure of accountability, than this would show the limitations of his distinction between three kinds of accountability and question the comprehensiveness of his structure.

## 4. Analysis

This chapter discusses accountability of the Tamir Rice shooting as a narrative. The first part of this chapter, section 4.1., explains the context of the case. It provides a narrative of the most important events in the weeks and months following the death of Tamir Rice, including a public forum where citizens question city leadership, the public release of crucial evidence for the case, as well as the release of a federal investigative report regarding civil rights violations by the CDP. After section 4.1., this chapter will discuss the three separate accountability mechanisms that have been identified in the available sources using the structural framework distilled from Walker (2003). These mechanisms are discussed in section 4.2. and 4.3. following Walker's structure. Section 4.2. discusses the external accountability mechanisms identified – criminal prosecution and tort litigation, which are both judicial accountability mechanisms. Section 4.3. discusses the only internal accountability mechanism identified in the case: administrative review. Section 4.4. discusses an outlier: an accountability mechanism that does not fit within Walker's framework.

*Figure 1: Schematic Overview of Local Accountability Mechanisms in American Policing (inspired by Walker, 2003)*



## **4.1. The Shooting in Context**

### **4.1.1. Public Outrage in Context and the Immediate Aftermath**

#### *4.1.1.1. The First Responses*

In terms of public response, the death of Tamir Rice cannot be seen as an isolated case. In the summer of 2014, the deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in New York had ignited nationwide outrage and protests. For both cases grand juries were installed to judge over a possible indictment of the police officers responsible, and in both cases the grand jury decided not to indict the officer. The verdict in the Michael Brown case was decided on the Monday after the Tamir Rice shooting, while in the Eric Garner case the verdict was made public eleven days later, on the 3<sup>rd</sup> of December. These grand jury decision only fueled public outrage and sparked nationwide protests (Gurman, 2014; Laughland, Epstein and Glenza, 2014). The 24<sup>th</sup> of November 2014 was marked by demonstrations in several major U.S. cities to protest the grand jury decision and while most protests were peaceful, the protest in Ferguson turned into major riots, including looting, arson and gunfire (Munshi, 2014). Although the demonstrations focused on the non-indictment of Officer Darren Wilson, many demonstrators showed signs commemorating Tamir Rice and other references to the death of Tamir Rice could be found at most protests.

In Cleveland the situation was reversed. Here, the protests focused primarily on the death of Tamir Rice, although references to the deaths of Michael Brown and Eric Garner were plentiful. On November 25, protesters temporarily blocked a freeway during a protest march, where activists chanted “hands up, don’t shoot” and “no justice, no peace”, two BLM chants. When the protest march went past a county jail, inmates showed support for the march by banging on the windows (Gillispie, 2014).

Public officials were caught in a bind. On the one hand the precarious situation forced public officials to be careful with public statements, while they simultaneously faced calls for transparency and accountability. The first public statements were made by police spokeswoman Jennifer Ciaccia and deputy chief officer Ed Tomba. These first statements set the tone for future statements and the framing chosen by public officials. Ed Tomba made clear that the boy did not



threaten the officers or pointed the gun at them, but Ciaccia stressed that the officers did not know the gun was fake: “it looks really, really real, and it’s huge” (Fitzsimmons, 2014). The president of the local police union noted that the officers had seen Rice pick the gun up from the table, where he was sitting with several others (Hayes, 2014).

On Monday, a major press conference was organized, where Mayor Jackson, Chief Williams, Deputy Chief Tomba and District Attorney (DA) McGinty were all present. Mayor Jackson started the press conference with condolences to the family of Rice and commemorating the tragedy. But in doing so, the mayor clearly attempted to relieve the police from some of the pressure by relating the incident to other incidents with young victims:

“But I want us to remember that a 12-year-old child lost a life. And that, uh, those of you who were here Saturday know that there was a 9-year-old who was shot, survived, not by police, there was a 17-year-old female who lost her life, not by police, and a 19-year-old. And I say that to you because, I don’t know anyone in this room who probably could not empathize or actually feel someone in those ages, that they care about, that they love” (*Cleveland.com*, November 24, 2014).

Chief Williams also attempts to minimize police responsibility by focusing on the dangers of weapons. “From this tragedy, we can gain knowledge. And we can proactively and diligently teach our children, and our community about the dangers of weapons, mainly handguns, whether they be real or fake. Guns are not toys” (*Cleveland.com*, November 24, 2014). He emphasizes the relationship between the police and the community by stressing that the police cares about “each and every other person in this community” (*Cleveland.com*, November 24, 2014) and that families should make sure children understand that the police is there to protect them.

Chief Williams and Deputy Chief Tomba also go into the procedures that will be set in motion. First, the police offered the family the opportunity to view the available videos, for which the family sent official representatives. Williams stated that the officers were on administrative leave, “which is per our protocol” (*Cleveland.com*, November 24, 2014). He does not mention that this administrative leave is only for the first three days following the shooting, after which the officers go back to work, although they were not allowed to go on patrol (Shaffer, 2014). At the moment of the press conference, the officers had not been formally interrogated, for

which a lawyer and a union representative have to be present. The investigation will be conducted by the *Use of Deadly Force Investigation Unit*, which includes members of the Homicide Investigative Team, the Internal Affairs Bureau, the Integrity Control Section, the Prosecutor's Office, the Community Relations Board and the Office of Professional Standards. The unit has a 90 day mandate before the investigation must be completed and turned over to the County prosecutor, who conducts its own investigation and reviews the evidence (*Cleveland.com*, November 24, 2014). Prosecutor McGinty assured that it is standard policy for him to always present such a case to a grand jury.

#### **4.1.1.2. The Public Forum**

A day later, on November 25, the city organized a public forum where members of the community could pose questions and express their grievances. The forum took place within the Cudell Recreation Center and many senior officials, including the mayor and the chief officer were present. From the available videos (*Vidmag Media, 2014A/B/C/D/E*), it becomes clear that while the event was largely peaceful and respectful, and that the community appreciated this opportunity for a dialogue with public officials, protesters were not allowed to bring signs into the center and there was widespread dissatisfaction with the official response to the incident. Most questions focused on the behavior of the police, their training or the accountability process, although some citizens accused the police of neo-Nazi practices (*Vidmag Media, 2014B*).

While there were many exchanges between officials and citizens during this forum, a few stood out in terms of relevance for this thesis. The first was the response of Mayor Jackson to a question on accountability. The mayor acknowledged the importance of accountability *as an administrative process*, but also stressed the difference between judicial and administrative accountability, stating that the legal process is out of the city's hands and remains the duty of the prosecutor and the court. He contrasts this type of accountability with administrative accountability, which he points out occurs "because they violated the process, procedures or general police orders" (*Vidmag Media, 2014A*).

A second exchange related to police reforms showed a reluctance by the mayor to enforce reform through legislation. Chief Williams first remarks how he believes in community policing

and that it is one of his main goals as chief of police to establish real community policing policies within the department. Only moments later, the mayor responds to a question about legislative reforms by stating that “you can’t legislate your way out of this...the real question here is: can you change behavior and can you change that relationship that will cause people not to want to do the things that they do” (*Vidmag Media, 2014B*).

When a citizen asks about psychiatric evaluations of the officers, Chief Williams explains that, before hiring, they go through a psychological evaluation, physical and mental testing and six month training before they go into the field (*Vidmag Media, 2014B*). While this statement on its own may not be remarkable, it becomes very relevant days later, when an assessment of Loehmann’s handgun performance becomes part of the public record.

But the most fundamental exchange of that evening occurs between one community member and Chief Williams with regards to the use of force by officers. The citizen questions why the police officer (Loehmann) used a shot in the torso, in contrast to for example a shot in the arm or leg, and whether or not an officer should be held to a different standard than ordinary citizens, since officers (should have) received “training that should exceed what I have, or what I’m capable of doing” (*Vidmag Media, 2014B*). Chief Williams at first generally explains how it is assessed whether the use of force is justified, by explaining that use of force is justified if the level of force is equal with the level of threat posed by the other person. This general answer is not satisfactory and the citizen rephrases his question, after which Chief Williams responds:

“Again, I don’t want to talk about what happened in that specific split-second. You’ll be able to see that on the video tomorrow. If an officer is faced with a person with a weapon in their hand, or about to use a weapon, or a weapon on their person, an officer has this much time to decide whether or not that person is actually going to use that weapon against them, or that person is going to give up. And our officers are trained to give commands. ‘Show me your hands’, ‘put your hands up’, ‘show me your hands’. That in itself is gonna (*sic*) tell my officer whether or not, during that split second, he has to use his firearm or other means of self-defense, or that person is gonna (*sic*) comply. So that’s our level of training. If I encounter you and you have a weapon on your person, the first thing I’m gonna (*sic*) tell you is: ‘show me your hands, put your hands up so I can see your hands’...And if you don’t show your hands, or if you put your hands places that may

be near that weapon, than that tells the officer that you're a threat to that officer or that officer's life, and then that officer has the right to respond with deadly force" (Chief Williams in *Vidmag Media*, 2014B).

This exchange shows a fundamental debate underlying the Tamir Rice case. Was the officer justified in using force, or more specifically deadly force, and shouldn't the officer be capable of handling such a situation in a different manner? Furthermore, there are several crucial components to Chief William's response. First, he starts by noting that he does not want to discuss the event itself, since the tape had not been released. Nonetheless, his general remarks are quite similar to the justification that will repeatedly be used by those defending the actions throughout this process. The first aspect of this defense is the split-second decision making. An officer has to assess in a matter of mere seconds whether a person is a threat or not, and if the officer believes the suspect is a threat, he has the right to use force. The second aspect of this defense is the use of commands. If an officer commands a person to do something ('put your hands up') than the person has to comply. This argument can also be traced to the very first public comments of the police on the day of the incident, when the police said Tamir refused to put his hands up and instead reached for the gun (Fitzsimmons, 2014).

#### ***4.1.1.3. The Video Released***

One day after the public forum, the official security video from the recreation center is released (*News 5 cleveland*, 2014A/B). While the police at first decided not to release the video, they changed their minds after the Rice family requested the release. Nonetheless, prior to the release of the video, representatives of the Cleveland Division of Police (CDP) expressed confidence in the video and believed it would show the officer acted reasonable during the incident (Withnall, 2014). During the press release of the video Deputy Chief Tomba remarked that "this is not an effort to exonerate. It's not an effort to show the public that anybody did anything wrong. This is an obvious tragic event where a young member of our community lost their (*sic*) life. We've got two officers that were out there protecting the public that just had to, you know, do something nobody wants to do."

Once the video was made public however, the perception of the case did not improve. Instead, the video raised a lot of questions, not just about the incident itself, but also about the explanations offered by police officials so far. News headlines focused on the fact that the shooting occurred within seconds after the arrival of the police and that the victim was only twelve years old (*see for example* Hanna, 2014; Booth, 2014; Fitzsimmons, 2014B). On *Cleveland.com*<sup>10</sup>, a highly critical editorial is published questioning the police's actions for several reasons. First, the editorial argues that it is unbelievable no one gave first aid to Tamir, until the FBI agent arrived four minutes later (Editorial Board, 2014). What is remarkable about this statement is that this information had not been made public. When the *New York Times* questioned the CDP about this accusation, a spokesman declined to comment, stating that he couldn't do so because the officers' conduct in the minutes after the shooting were "part of the investigative process" (Oppel, 2014B). Second, the editorial questions the statements the police had made before the video was published, and scolded the senior officials for defending the officers.

"Deputy Police Chief Ed Tomba said the officers ordered Tamir to 'show your hands' three times from the ajar passenger door, but it's hard to believe that's possible based on the video. The shot that struck Tamir appears to have been fired the very moment the officer stands up after getting out of the car. If this is the proper technique for confronting an armed gunman, let alone a 12-year-old boy with a toy gun, one has to wonder what training manual they are consulting" (Editorial Board, 2014).

This was the beginning of a streak of negative press coverage on the CDP. On December 1, *Cleveland.com* published an interview with the father of the shooting officer, Fred Loehmann, who is the first person to publicly speak out on behalf of the officer himself. In the interview, Fred Loehmann provides a story similar to that of public officials: his son had no choice, he didn't know the gun was fake and he thought the man was an adult. But in discussing Tim Loehmann's background, his father makes a noticeable comment. Tim Loehmann started his career in 2012 in Independence, Ohio, "but", as the article stated, "he soon grew tired of the slow

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<sup>10</sup> Cleveland.com is the online news source of the Northeast Ohio Media Group, which publishes *The Plain Dealer* and *Sun Newspapers*.

pace of suburban policing.” Father Loehmann then continues by stating that his son “loved the action” (Shaffer, 2014).

When this interview was published, the Northeast Media Group had unsuccessfully requested Loehmann’s personnel file from both the CDP and the Independence Police Department. But two days later, the Independence Police Department did release Loehmann’s personnel file, and the content was damning. While the file does corroborate the claim that Loehmann wanted more action, it also showed his resignation had little to do with this search for action. Instead Loehmann was allowed to resign in order to evade dismissal from the police force, following a streak of incidents (Ferrise, 2014A). Personal issues related to his relationship caused Loehmann distress and affected his performance in several ways. He often cried during training sessions, and once even fell asleep. He once disobeyed an order to stay at the police dispatch center, and lied to his superior that dispatchers told him he was allowed to leave. At a state gun qualification session, Loehmann arrived “sleepy and upset”, and during the session he “was distracted and was not following simple instructions” (Ferrise, 2014A). In a letter arguing to release Loehmann of his duty, Deputy Chief Jim Polak wrote:

“He could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal...Unfortunately in law enforcement there are times when instructions need to be followed to the letter and I am under the impression Ptl. Loehmann, under certain circumstances, will not react in the way instructed...I do not believe time, nor training, will be able to change or correct the deficiencies” (Ferrise, 2014A).

In response to this revelation, police spokesman Sgt. Ali Pillow acknowledged that the CDP had not reviewed Loehmann’s personnel file from Independence, although she stated that the Cleveland police did contact the Independence Police Department, but that they were referred to the human resources department, which supposedly told them Loehmann had no disciplinary actions taken against them. Strikingly, the fact that Loehmann’s personnel file had not been reviewed was not a mistake; the CDP had no policies about viewing personnel files from previous employers. This was immediately amended, and the same day a review of an officer’s personnel files was included into Cleveland’s hiring policy (Ferrise, 2014B).

The stream of bad press about the Tamir Rice case at this point seemed endless. On December 8, Samaria Rice, Tamir's mother, where she called out the police for handcuffing her daughter and putting her in a patrol car, putting her son in another patrol car and threatening to do the same to her. A police spokeswoman declined to comment on the treatment of Ms. Rice and her children (Oppel, 2014A). The Sunday after, Cleveland Brown's player Andrew Hawkins wore a shirt when he entered the field which read "Justice for Tamir Rice and John Crawford" (Hayes, 2014). This angered Jeffrey Follmer, the president of the Cleveland Police Patrolmen's Association, who responded by stating that athletes should keep quiet about police cases and that, considering the work the CDP does in protecting the NFL team's stadium, the club owed "us" an apology (Hayes, 2014). In a subsequent interview, Follmer struggled to defend his statements, but stood by them. He argued that the football player had no insight into the facts and that he, with this statement, offended the responsible officers as well as the police force at large. Follmer stated that the video "clearly shows Tamir Rice was an imminent threat" (Hayes, 2014). When asked why the fact that the police provides security during football game is relevant, Follmer remarked that "he is free to talk about it, but it shouldn't be talked [about] on a football field, where we are supporting the Brown's by doing security", adding that the call for justice is wrong and that the shooting is justified and that "when you talk about two of us that were put in this situation, then you're talking about all of us" (Hayes, 2014).

Shortly after new year, the Northeast Ohio Media Group obtained a longer version of the surveillance video, which revealed uncomfortable truths about the events themselves and the aftermath (Shaffer, 2015A; McCormack, 2015). First, the claim by Cleveland.com about slow administration of first-aid and Samaria Rice's claim about handcuffing her 14-year-old daughter, were both proven to be true. Secondly, the city and the CDP had repeatedly claimed they wanted as much transparency as possible, but until the release of the second video, which they only publicized after they were pressured to do so by threats of legal procedures, they had denied these both facts and refused to publicize the evidence under the guise of the evidence being part of "an open and ongoing investigation" (Shaffer, 2015A). This revelation therefore raised doubts about the incident itself, but, maybe more importantly, it undermined the CDP's credibility and public confidence in the ongoing investigation.

#### **4.1.2. Pattern or Practice: Federal Investigation into the CDP**

The case of Tamir Rice ensured constant media coverage on the CDP and their civil rights practices, but another story brought the issue even more to the forefront: the release of the DOJ pattern or practice investigation. On December 4, one day after the publication of Loehmann's personnel file, the DOJ finalized its civil pattern or practice investigation into the CDP, concluding that the CDP engages in "the use of excessive force in violation of the Fourth Amendment" (DOJ CRD & USDA North Ohio, 2014: p.1). The introductory letter states that:

"Structural and systemic deficiencies and practices – including insufficient accountability, inadequate training, ineffective policies, and inadequate engagement with the community – contribute to the use of unreasonable force" (DOJ CRD & USDA North Ohio, 2014: p.1).

The investigation was all but completed when the Rice incident occurred, so his case itself had not been included into the investigation. However, with the DOJ investigating over 600 use of force incidents, the report provides strong evidence about the conduct of the CDP. Furthermore, as many critics would argue, many of the DOJ's conclusions are directly applicable to the Tamir Rice case (Maddow, 2014), and one of the many cases included in the investigation involved officer Garmback, who had used a chokehold and had beaten Tamela Eaton, a woman who had filed a complaint about a car blocking her driveway (Maddow, 2014). For this incident, the city of Cleveland had paid \$100,000 in compensation for police misconduct. For these reasons, a complete overview of the conclusions in the DOJ report can be found in Box 2.

Mayor Jackson responds to the report by stating that he welcomes the investigation and calls the review of CDP by the DOJ "a great opportunity" (*TV20 Cleveland*, 2014). He points out that he invited the DOJ to come investigate the CDP after a 2012 incident, where 62 squad cars chased two unarmed suspects, and after the chase, thirteen officers shot them both in the car, with a total of 137 bullets (Shoichet, Elliot and Lah, 2015). Mayor Jackson vows that the CDP will enter a Consent Decree, controlled by an independent monitor.



*Box 2: Schematic overview of conclusions DOJ in pattern or practice investigation on unconstitutional use of force by CDP (based on DOJ CRD & USDA North Ohio, 2014)*

- A. CDP officers engage in a pattern or practice of unconstitutional force.
  - I. CDP officers shoot at people who do not pose an imminent threat of serious bodily harm or death to the officers or others.
  - II. CDP officers hit people in the head with their guns in situations where the use of deadly force is not justified.
  - III. CDP officers use less lethal force that is disproportionate to the resistance or threat encountered.
  - IV. CDP officers use unreasonable force, including Tasers, against individuals with mental illness, individuals in medical crisis, and individuals with impaired faculties.
- B. CDP officers commit tactical errors that endanger the Cleveland Community and reduce officer safety as well.
  - I. CDP officers carelessly fire their weapons, placing themselves, subjects, and bystanders at unwarranted risk of serious injury or death.
  - II. CDP officers use other dangerous and poor tactics, placing members of the Cleveland community at risk.
- C. Systemic Deficiencies Cause or Contribute to the Excessive Use of Force.
  - I. CDP Does Not Ensure that Officers Adequately Report the Force they Use.
  - II. Supervisory Investigations of Force are Inadequate.
  - III. CDP's Internal Review Mechanisms are Inadequate.
    - a. CDP Fails to Adequately Investigate and Hold Officers Accountable for Misconduct.
      - i. The Internal Affairs Unit and the Use of Deadly Force Investigation Team do not conduct thorough and objective investigations of alleged officer misconduct.
      - ii. CDP applies Garrity protections too broadly
      - iii. CDP does not implement appropriate corrective measures.
    - b. CDP Fails to Adequately Investigate Civilian Complaints of Officer Misconduct
  - IV. CDP Officers are Inadequately Supported and Trained
  - V. CDP's Use of Force Policy is Still Deficient.
  - VI. CDP's Early Intervention System is Inadequate.
  - VII. CDP Is Not Engaging in Community Policing Effectively at All Levels of the Division.
  - VIII. CDP's Approach to Individuals in Crisis Is Underdeveloped.
  - IX. CDP Equipment, Technology, and Staff Planning are Inadequate.

The mayor does disagree with the DOJ on two accounts. First, he argues that the DOJ investigation did not go far enough by excluding external problems from the investigation. Second, Mayor Jackson disagrees with the conclusion that there is a case of systemic failure: “I maintain that there is no systemic failure, there is (*sic*) significant problems we have to address” (*TV20 Cleveland*, 2014). In response to the fact that this is the second DOJ investigation into the CDP in a decade and that the CDP failed to implement the finding from the first investigation, Mayor Jackson remarks that this time, the implementation of the Consent Decree will be independently monitored, to ensure proper implementation (*TV20 Cleveland*, 2014).

## **4.2. External Accountability**

### **4.2.1. Judicial Accountability**

Walker differentiates between three forms of judicial accountability mechanisms, of which two are present in the case of Tamir Rice. The first form of judicial accountability, constitutional accountability, can be discarded. No case related to Tamir Rice has reached the Supreme Court. Previous rulings on the constitutionality of the use of force are applicable and have been applied in this case, but no judgment has been made to whether those constitutional interpretations are valid or whether they have been properly applied in this case. The other two forms of judicial accountability, criminal prosecution and tort litigation, can both be identified in this case and will be discussed separately in this section. The first part of this section will discuss the criminal prosecution, after which the focus will shift towards the tort litigation.

#### **4.2.1.1. Criminal Prosecution**

##### ***4.2.1.1.1. The Grand Jury***

When protests demand accountability in cases of possible police misconduct, they actually refer to the criminal prosecution of the involved officers. This is exemplified by the public outrage after the non-indictment of the officers in the Michael Brown and Eric Garner cases. Civil rights

activists like BLM will call for more structural changes (*Democracy Now*, 2016), but public outrage is most prominent directly after the incident or after a court ruling, which in almost every case favors the police officer (Walker, 2003).

On the first press conference, the Monday after the Tamir Rice incident, Deputy Chief Tomba explained how the criminal investigation will be conducted by the *Use of Deadly Force Investigation Unit*, which would turn their findings in with the County prosecutor, Timothy McGinty, who in turn assured that he would present the case to a grand jury. But on January 2, 2015, only 6 weeks after the incident, the City of Cleveland and the County Sheriff's Department released a joint press statement to announce the transfer of the investigation from the *Use of Deadly Force Investigation Unit* to Chief Clifford Pinkney of the Cuyahoga County Sheriff's Department. Mayor Jackson stated that he "believe[d] that the best way to ensure accountability in a use of force investigation is to have it completed by an outside agency" (Williams & Lundgard, 2015).

The Sheriff's Department, supported by the Ohio Bureau of Criminal Investigation, conducted the investigation and, June 3, 2015, handed the completed investigation over to the county prosecutor, who, a couple of days later, released a redacted version of the report, totaling about 250 pages (Cuyahoga County Sheriff's Department, 2015). McGinty said he released the report because he wanted full transparency on the facts of the case, in order to accommodate an "intelligent discussion" (Lieszkovsky, 2015) on needed changes in use of force policy, police training and leadership. The report states that "as unbiased collector of fact, the investigative team has not, and will not, render any opinion of the legality of the officer's actions" (Cuyahoga County Sheriff's Department, 2015).

Several things stand out from a closer inspection of the report. First, neither officer under investigation, nor the Rice family, accepted a request by investigators to be interviewed, with the officers pleading their Fifth Amendment rights. The report does include statements made by Loehmann, as recollected by other officers: "He gave me no choice. He reached for the gun and there was nothing I could do" (Cuyahoga County Sheriff's Department, 2015; Campbell, 2015). These comments by Loehmann had been reported on before (Shaffer, 2014). What was new information, however, were the witness accounts. Of the witnesses interviewed, not a single one mentioned verbal commands or warnings being given prior to the shooting. One woman, who

lived across the street from the rec center and who was getting in a friend's car at the time of the shooting, did mention hearing a verbal command - "Freeze. Show me your hands!" (Lieszkovsky, 2015) – but only after she heard the two shots being fired.

In the meantime, activists, led by Rev. Dr. Jawanza Karriem Colvin, had filed affidavits<sup>11</sup> in Cleveland Municipal Court, seeking charges against Loehmann and Garmback for aggravated murder, murder, involuntary manslaughter, reckless homicide, negligent homicide, and dereliction of duty. The judge presiding the case, Ronald B. Adrine, ruled that there is probable cause for charging Loehmann with involuntary manslaughter and reckless homicide and charging Garmback with negligent homicide. However, the judge noted that "those felony charges and perhaps some, or all, of the misdemeanor charges must ultimately be delivered to the Cuyahoga County Prosecuting Attorney and will then be subject to *his* discretion" (Berman & Lowery, 2015). Ultimately, his ruling was no more than an advise for prosecutor McGinty, who had to make the final judgement. McGinty responded with a written statement:

"This case, as with all other fatal use of deadly force cases involving law enforcement officers, will go to the Grand Jury. That has been the policy of this office since I was elected. Ultimately, the Grand Jury decides whether police officers are charged or not charged" (McCormack, 2015).

So far, McGinty had made no statement on whether he believed the indictment, constantly pointing at the grand jury, as if his opinion on the case was irrelevant. In reality, a prosecutor is the only person presenting evidence to the grand jury. As Flynn points out:

"[Grand-jury proceedings] are entirely one-sided forums. Prosecutors decide what witnesses to call and what evidence to present. They instruct the grand jurors, ordinary citizens...on the law. There is no defense present...It is also done entirely in secret" (Flynn, 2016).

In November, McGinty had again refused to comment on whether he thought the officers should get indicted or not, invoking "the sacred secrecy of the grand-jury process" (Flynn, 2016). However, by that time he had done something else. In October, the prosecutor's office had

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<sup>11</sup> An affidavit is: "A sworn statement in writing made especially under oath or on affirmation before an authorized magistrate or officer" (Merriam-Webster definition).

released two reports written by experts who both argued that the shooting had been justified (Shaffer, 2015B). In November, a third expert report with the same conclusion, was published as well. Also, enhanced image of the shooting were released late November. According to the expert hired by the prosecutor, the enhanced images prove that Rice moved his arm towards his waist and grabbed the gun (Blackwell, 2015).

On December 28, 2015, the Grand Jury declined to bring criminal charges against officers Loehmann and Garmback, following the advice of the prosecutor. In the press conference announcing the decision, McGinty states “given this perfect storm of human error, mistakes and miscommunications by all involved that day, the evidence did not indicate criminal conduct by police” (*News 5 Cleveland*, 2015). He cites the enhanced surveillance images as the critical piece of evidence that convinced both the prosecutor and the jury that indictment would have been unreasonable. The enhancement of the surveillance footage made the claim that Rice pulled the gun out of his waistband “undisputable” (*News 5 Cleveland*, 2015). In the written report released the day after, McGinty confirms his verbal statements by concluding that “when the officers approached Tamir, he unexpectedly moved in their direction and began pulling the gun from his waistband” (McGinty, 2015). Mayor Jackson responds to the decision by saying that the decision brought closure to a difficult year and a difficult case, and that now the city would proceed with an administrative review (*TV 20 Cleveland*, 2015). The criminal case was closed.

#### **4.2.1.1.2. A GQ Exposé**

Half a year later, GQ released a major exposé on the grand-jury proceedings, shedding a light on what actually occurred during the secret proceedings. The conclusion was that McGinty had actively framed the case in a manner that could lead to no other conclusion than to decline indictment (Flynn, 2016). In the article, Flynn interviewed (amongst others) three experts that were part of the proceedings on behalf of the Rice family, rather than the prosecutor. Unsurprisingly, these experts disagreed with the experts called upon by the prosecutor. Disregarding the arguments of the experts and whether the shooting was justified, the fact that there were experts present during a grand jury hearing is remarkable. The fact that there were experts hired by the victim’s family, unprecedented. As Flynn (2016) points out, the goal of a

grand jury is not to judge whether the suspects are guilty, but whether there is probable cause for prosecution, which is a much lower bar than required for actual conviction.

The three experts hired by McGinty were Colorado prosecutor S. Lamar Sims, former FBI agent and current North Virginia Community College associate professor Kimberly A. Crawford, and former Florida Sheriff and consultant W. Ken Katsaris. Neither one of them is a well-known, credible expert or a well-credentialed scholar (Flynn, 2016). In fact, Crawford had previously been criticized by the DOJ “for interpreting legal standards on deadly force in a manner too favorable to law enforcement” (Flynn, 2016), when she defended a sniper who shot a fleeing woman in the 1990’s.

But it was a different expert, forensic video examiner Grant Fredricks, that provided the “undisputable” (*News 5 Cleveland*, 2015) evidence that the officers acted reasonable: the enhanced video footage, analyzed by an expert specialized in video recording software. He would provide the evidence that Tamir Rice pulled the gun out of his pants.

These experts were publicly presented as the defining pieces of evidence in the case. But as Flynn points out, their conclusion were far from “undisputed”. The experts hired by the representatives of the Rice family were retired cop Roger Clark - who had written tactical deployment guidelines and had testified dozens of times in similar cases - and Jeffrey J. Noble, a former deputy chief officer and co-author of police textbooks who had reviewed hundreds of use-of-force cases. Both Clark and Noble had concluded that the use of force was not justified. Their major disagreement with the prosecutor’s experts was based on the relevance of the events prior to the shooting. Crawford wrote:

“If the hands move in the directions of a ‘high risk area’ – an area where a weapon may be concealed -...well trained officers will immediately identify this as a serious threat...Unquestionably, the actions of Tamir could reasonably be perceived as a serious threat to Officer Loehmann” (Shaffer, 2015B).

With regards to the events prior to the shooting, Crawford acknowledges that there are questions about what, or even if, officer Loehmann gave as commands to Tamir, but both Crawford and Sims conclude that questioning the approach used by Loehmann and Garmback was irrelevant:

“To suggest that Officer Garmback should have stopped the car at another location is to engage in exactly the kind of ‘Monday morning quarterbacking’ that case law exhorts us to avoid” (Shaffer, 2015*B*; Flynn, 2016).

Noble and Clark wholeheartedly disagreed. Noble argued that the moments before the shooting are as relevant for the legality of the shooting as the shooting itself. He argues that Loehmann should never have been this close to the suspect.

“Reasonable police officers responding to a man-with-a-gun call would have stopped their vehicle prior to entering the park to visually survey the area to avoid driving upon a subject who may be armed. This serves not only to protect the officers, but also serves to protect others who may be in the area and provides both time and distance for the officers to evaluate the situation and develop a plan” (Flynn, 2016).

Turning to the “undisputable” video evidence, another expert had been called upon by the Rice family: Jesse Wobrock, an expert in forensic biomechanical engineering. He very much disagreed with the conclusion that Tamir had pulled the gun from his pants. Instead, he concluded from the video that Tamir “had his hands in his pockets when Loehmann fired” and that the arm movement visible in the video was “a reaction to getting hit with a bullet, not a prelude to it” (Flynn, 2016).

Flynn’s major revelation however, was not that the experts disagreed with the experts of the prosecutor, but their treatment by the prosecutors. When Clark was called upon to testify, the prosecutor was holding a toy gun similar to the gun Tamir Rice had. Clark was surprised by this because “there is no need for theatrics in grand-jury proceedings” (Flynn, 2016). Clark described

the atmosphere during his testimony as “very hostile”, and the attitude of the prosecutor as disdainful (Flynn, 2016). He described how the prosecutors repeatedly referred to Tamir as an ‘active shooter’ and that the officers “had to be brave” (Flynn, 2016). Noble was equally surprised by his treatment during the testimony. Noble was under the impression that he would present his findings, maybe answer a few questions, and then be done. Instead, he faced a thorough cross-examination. “It was an attack from the minute I walked into the room” (Flynn, 2016). During the questioning, Noble says he was even asked whether he was paid for being there. Noble concludes his recollection of the testimony by saying he “never had to fight so hard to defend myself in the midst of a presentation. And I’ve definitely never seen two prosecutors play defense attorney so well” (Flynn, 2016).

After the testimony of Noble and Clark, Jonathan Abady, one of the attorneys representing the Rice family, complained about the treatment his experts was given. Wobrock was interviewed after that complaint and says his experience was not as bad as the experiences of Clark and Noble. But Wobrock also describes the behavior of the prosecutors as “[acting] like they were defense attorneys for the cops. Their line of questioning had to do with attacking me professionally” (Flynn, 2016). Wobrock was repeatedly asked about his expertise on video coding, even though he made it very clear he didn’t have any. After all, he was an expert in body movements and reactions. His job was to analyze the movements as seen in the video, not the video itself. Similarly to Clark, Wobrock said he was being framed as selling his opinion, rather than his expertise. He mentioned that prosecutor Meyer referred to the civil suit the family had started against the city, framing them as greedy and in it for the money (Flynn, 2016).

The extensive piece written by Flynn on the grand-jury proceedings sketches a picture of the prosecutors framing the case in favor of the police officers from the get-go. McGinty repeatedly stresses the secrecy of these proceedings, but does publish the investigative report and the opinions of three experts, who all coincidentally agree that the officers were justified in using deadly force. He called the opinion of a video coding expert on the body movements visible in the video as “undisputable” evidence, but disregards the opinion of biomechanical engineer who concluded differently. He allowed the defendants to read a written statement defending their actions and then plead the Fifth, even though he does not have to invite them to the hearing.



Tamir had been framed as a dangerous ‘active shooter’ and the officers as ‘being brave’. But most importantly, the prosecutors attempted to smear the reputation of the Rice family and the experts they hired.

McGinty never commented on the story written by Flynn. Responding to a requests for comments by Flynn, his office remarked that “Clark and other witnesses can characterize their experience before the Grand Jury in any way they want, but prosecutors cannot reveal what was said or done in the room. So by definition you’re only getting one side” (Flynn, 2016). Due to the secrecy of the hearings, this thesis cannot confirm whether the stories of Clark, Noble and Wobrock are true or not. However, Flynn does offer a convincing story. Several details of the case are at least remarkable: the slow process prior to the hearings; the presence of the experts and their credentials; McGinty’s silence on his opinion of the case prior to the decision by the grand jury; McGinty’s claim of secrecy about the proceedings, compared to his repeated claims of transparency when releasing particular pieces of evidence; even the fact that McGinty opted for a grand-jury proceeding, something that is not required but does result in a secretive process, which would not have been the case with a traditional private review by the prosecutor. Another notable point is the continuous reminder by the prosecution that the gun looked real because the orange tip was sawed off, while simultaneously claiming that Tamir was about to pull the gun from his waistband. If Tamir Rice did have the gun in his waistband, it is irrelevant whether the orange tip was sawed off or not, since it would have been in the waistband and thus invisible when the officers arrived at the scene.

Furthermore, while the stories of the experts are difficult to confirm, Flynn does point to one significant piece of evidence with regards to framing the family as money-hungry. On November 5, 2015, McGinty publicly commented about the grand-jury proceedings. When asked about the demands of the Rice family to replace McGinty with a special prosecutor, McGinty replied with:

They waited until they didn’t like the reports they received. They’re very interesting people...let me just leave it at that...and they have their own economic motives” (Golston, 2015).

When the story was made public, McGinty sent a written statement to the WKYC network:

“[t]he response was not about Ms. Rice. We have never once criticized Tamir’s mother or questioned her right to grieve in any way. We have met with her repeatedly and cooperated with her in every possible manner. And we will continue to do so” (Golston, 2015).

#### **4.2.1.2. Tort Litigation**

The comments by McGinty about the “economic motives” (Golston, 2015) of the Rice family refer to the civil suit the Rice family filed against the city of Cleveland and the police officers in question. One day after the DOJ released its pattern or practice investigation, the Rice family decided to sue the City of Cleveland and the officers involved in the case, filing a federal civil rights lawsuit with the U.S. District Court (Feran, 2014; Palmer, 2016). Officer Loehmann and Garmback were sued because the plaintiffs believed the actions of the officers to have been “unreasonably, negligently, recklessly, wantonly, willfully, knowingly, intentionally, and with deliberate indifference to the safety and rights of Tamir Rice” (Feran, 2014). The City of Cleveland was sued because the plaintiffs argued that the “policies, patterns, practices customs and usages regarding the use of deadly force against nondangerous subjects were the moving force behind the use of force and proximately caused Tamir Rice’s suffering and death” (Feran, 2014). Furthermore, the plaintiffs argued that the city had neglected to do a proper background check before hiring officer Loehmann, and that the officers received insufficient training and supervision. Finally, the plaintiffs cited civil rights abuses by the department as a contributing factor, referring explicitly to the 2014 DOJ investigation (Feran, 2014).

Officers Loehmann and Garmback requested a delay of the civil suit until the criminal investigation was completed, but a judge ruled that the officers had the obligation to respond to the civil suit and that the city had to move forward with the discovery process. However, the judge did accommodate the officers by ruling that they did not have the obligation to “engage in any discovery for the next 60 days” (Volk, 2015). While the defendants attempted to delay the lawsuit, the plaintiffs filed several requests to amend the lawsuit. Overall, the lawsuit has been amended three times. Most notably, the plaintiffs requested an amendment to the lawsuit to

include Constance Hollinger and Beth Mandel as defendants - the two 911-dispatchers who received the call and passed the information on to officers Loehmann and Garmback - as well as Lieutenant Gail Bindel and Sgt. Edwin Santiago, two police officers held responsible for hiring Loehmann in 2014 (Heisig, 2015).

After the criminal investigations was completed and the grand jury ruled not to indict the two policemen, Prosecutor McGinty called the civil lawsuit the Rice family's best chance at justice. "In our country, we have parallel systems of justice, and the civil justice system may yet provide the Rice family with some of the accountability they deserve" (Carissimo, 2015). The conclusion of the criminal investigation expedited the civil process. Chief U.S. District Judge Solomon Oliver Jr. presided over the lawsuit and on March 8, 2016, after receiving court filings from both sides indicating a willingness to negotiate a settlement, sent the case over to Judge Dan Polster. Dan Polster was known "for successfully pushing those involved in civil litigation toward resolving their cases" (Heisig, 2016A). This time, it took Polster less than 50 days.

The settlement was announced on April 25, 2016<sup>12</sup>, through a one-page court filing. In the filing Polster states that after one "all-day session April 1, 2016, followed by multiple telephonic communications" (Heisig, 2016B) both parties agreed on a \$6 million settlement paid by the City of Cleveland over 2 years, with \$5.5 Million allocated to the estate of Tamir Rice and \$250,000 each for Tamir's mother and sister. The settlement agreement also included the acknowledgement that "[t]here is no admission of wrongdoing, and all plaintiffs will execute full releases against the City of Cleveland and all individual defendants" (Heisig, 2016B).

Mayor Jackson held a press conference after the settlement was announced. After being asked how to reconcile the denial with any wrongdoing with a \$6 million settlement, Jackson referred to the denial as standard legal procedure:

"You have to ask attorneys how you do those things, but I don't ever remember any settlement that admits to any wrongdoing, it's just a legal way of doing things. And it's an accepted legal process and an accepted legal outcome" (*TV 20 Cleveland*, 2016).

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<sup>12</sup> Although the settlement was announced on April 25, it needed approval from a Probate Court Judge before it could go in effect. The approval was granted by Judge Anthony J. Russo on November 30, 2016 (Heisig, 2016E).

When asked about internal disciplinary proceedings for the officers, Jackson notes that the city has “instituted...the review committee that really reviews all of the use of deadly force” (*TV 20 Cleveland*, 2016), referring to the Critical Incident Review Committee. The settlement would not affect the disciplinary investigations in any way. Officers Loehmann and Garmback responded to the settlement with a written statement in which they “recognize the value of early legal resolution to allow some healing to begin” although “they maintain [the use of force] was ‘legally reasonable’ under all of the circumstances” (Heisig, 2016D). The family responded through several spokespeople with the message that no amount of money could make up for the loss of their child. “They also feel, correctly, that they were cheated out of a fair criminal justice process” (Heisig, 2016B).

The police union also responded to the settlement. The union released a statement on the day of the announcement, in which they “hope the Rice family and their attorneys will use a portion of this settlement to help educate the youth of Cleveland in the dangers associated with the mishandling of both real and facsimile firearms” (Mark, 2016). The statement caused anger among many sympathetic to the Rice family, with one respondent translating the statement to: “I hope you use this settlement from us shooting your son dead to teach kids how to not get shot dead” (Mark, 2016).

## **4.3. Internal Accountability**

### **4.3.1. Administrative Accountability**

#### ***4.3.1.1 Administrative Review: CIRC and the Office of Quality Control.***

The installation of the Critical Incident Review Committee (CIRC) was announced directly after the grand jury decision not to indict Loehmann and Garmback. The press conference was officially organized so Mayor Jackson and Chief Williams could respond to the non-indictment, but both their statements and the questions afterwards were related more to the administrative review process than a response to the grand jury decision. Mayor Jackson announced the start of the administrative review, after which Chief Williams explains the review process:

“We start our administrative process in this matter with both the officers involved. We are going to reconvene our [CIRC]. That committee will look at this incident from start to finish. That committee will also take a look at any and all the information that is going to be provided to them...in their review of this incident. Once that’s completed, the results of that review will be forwarded to my office, at which time I’ll take a look at that and then we will conclude this process. Now, what that conclusion looks like, none of us know...They will forward a recommendation to my office. At that time, we will start our administrative process” (*TV20 Cleveland*, 2015).

CIRC was impaneled in February 2016 and included both employees of the CDP and civilians. The committee was tasked with an administrative review of “the actions of all members involved in the incident for compliance to rules & regulation, General Policy Orders, rules of the Civil Service Commission, training. Tactics and standards of the Division of Police” (CIRC, 2017).

Separate from the CIRC investigation, the Office of Quality Control, which is part of the city’s Department of Public Safety, was charged with conducting an investigation<sup>13</sup> into the hiring process of officer Loehmann, with a special focus on the application documents filed by the officer (D. Williams, 2017). Both investigations had concluded their investigations by the end of 2016, and on January 13, 2017, recommended administrative charges were announced against Ptl. Loehmann, Ptl. Garmback and Ptl. Cunningham. The announcement also speaks of forthcoming administrative charges “against one other member” (Williams, 2017), who later is identified as 911-dispatcher Hollinger.

The CIRC-report investigated the actions of all actors involved, but the committee concluded that only two possible infractions of police policies occurred during the incident. The first was the failure by dispatcher Hollinger to forward all relevant information to the police officers. The second possible violation was the failure of Cunningham to request proper authorization for second employment and lying about it on the Form-1 Cunningham filed after the shooting (CIRC, 2017).The committee concluded that the other actors investigated committed

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<sup>13</sup> The final report of this investigation was not included in the documents released by the City of Cleveland and could not be retrieved in another way. Therefore, all statements with regards to its content are based on the press release of May 30, 2017 (Ciaccia and Williams, 2017) and the disposition letter Loehmann received (McGrath, 2017).

“no apparent rule or policy violations”. After examining the tactics used by Loehmann and Garmback, the committee determined those tactics “were reasonable and were based on their response to RICE’s actions” (CIRC, 2017). In an addendum CIRC does note that officers Garmback and Loehmann may have violated communication policies by not reporting their arrival time immediately. Furthermore, the addendum notes that their conclusions with regards to Garmback’s driving behavior before the incident diverts from the conclusion of the previously conducted Internal Affairs investigation.

“The Internal Affairs investigation concluded that P.O. Frank Garmback violated the Use of Force General Police Order policy section when he drove his marked zone car up to a person reported to have a weapon. Conversely CIRC reached a different conclusion” (CIRC, 2017).

The Internal Affairs investigation had been conducted directly after the incident and was filed on February 9, 2015. The report draws four conclusions on the basis of the investigation. First, Timothy Loehmann’s use of force was “reasonable and within the guidelines” (CDP IAU, 2015: p. 8). Second, Garmback’s use of force against Tamir Rice’s sister was justified. With regards to the driving behavior of Garmback, the report concludes that “he should have adapted the training he was given during the 2012 and 2013 in-service training for us in handling this assignment” (CDP IAU, 2015: p. 6) and was therefore in violation of police policies. The third conclusion of the report was that Hollinger had failed to pass on critical information and should thus be disciplined (CDP IAU, 2015).

#### ***4.3.1.2. Administrative charges Against Individuals***

The administrative charges were recommended by Chief Williams after he had “reviewed the findings and determined that the rule violations discovered during the investigation reached the level to be forwarded to the Safety Director’s office for an Administrative Hearing for final determination” (D. Williams, 2017). Public Safety Director Michael McGrath notified each defendant of the pre-disciplinary conference organized to review the administrative charges and

specified the administrative charges that were being held against him or her. The administrative pre-disciplinary hearing were presided over by Michael McGrath (McGrath, 2017A; 2017B; 2017C), with the exception of the hearing for Hollinger, which was presided over by Chief Williams himself (C.D. Williams, 2017). Cunningham and Hollinger were notified of the results of their hearings shortly thereafter.

Officer Cunningham was the first to receive the result of his hearings. On March 6, 2017, Cunningham received his disposition letter, which states that he has been found guilty of one of the two charges against him. He was charged with two violations of the Rules and Regulations and the General Police Order. The first charge was “working secondary employment at 1910 West boulevard (Cudell Recreation Center) without permission” (McGrath, 2017A), which Cunningham did not contest. The second charge against Cunningham was that he would have “completed, signed and submitted an untruthful Form-1 report” after the Tamir Rice incident, referring to a statement in the Form-1 that he did have authorization for second employment. To this charge Cunningham plead not guilty. McGrath dismisses the second charge and finds Cunningham guilty of the first charge. As a result Cunningham is suspended for two days without pay.

Dispatcher Hollinger received the results of her hearing on March 10, four days after Cunningham. She was charged with failing “to include [pertinent] information in the incident or to update the incident with the applicable information” (C.D. Williams, 2017), referring to the failure to notify the officers that the gun was ‘probably fake’ and the suspect a juvenile. Hollinger plead not guilty, but was nonetheless found guilty of the charge and Chief Williams issued an eight day suspension as a result.

Both Hollinger and Cunningham were found guilty of violating official policies and as a result received suspension without pay. But the main actors in the review were obviously Loehmann and Garmback, and they had to wait for the conclusion of the review of their cases until May 30, 2017. Immediately thereafter the city released a press statement and published all charge letters and disposition letters, as well as the CIRC report and the IAU report.

Officer Garmback had been charged with violating various police policies, Rules and Regulations and General Police Orders on two counts. First, he did not report the arrival time immediately upon arrival, which made coordination with “the primary zone car” (McGrath, 2017B) impossible. Secondly, Garmback was accused of failing to “employ proper tactics when you operated the zone car up to what was reported to be an armed suspect thereby violating the Policy of General Police Order 2.1.01”(McGrath, 2017B). Garmback plead not guilty, but was found guilty by McGrath (2017B) on both counts and he issued a ten workday suspension for Garmback, as well as the requirement to attend additional tactical training.

In the disposition letter McGrath extensively motivates his decision, in contrast to the letters Hollinger and Cunningham received, wherein McGrath included little motivation for his judgement. McGrath argument starts with the notion that the car Garmback was driving was the back-up car, not the primary car. Therefore Garmback should have coordinated his actions with the primary car, which he failed to do. “No one knew where you were or what you were doing, and you did not know where anyone else was or what they were doing” (McGrath, 2017B). This resulted in approaching the suspect without back up, which is a violation of standard procedures. In this context McGrath also points out that Garmback had a probationary officer in the car. “Therefore, you needed better manpower coverage of the situation, which required obtaining assistance from the primary zone car”. Garmback defended his approach by insisting it was an active shooter situation, but McGrath does not accept this explanation.

“Upon reaching the entrance to the park, you indicated that you was a person sitting alone at the picnic table under the gazebo who matched completely the description of the suspect. The person was not moving at that time. You indicated in your April 4, 2016 interview that no other persons passed you as you entered the park; also indicated you did not think that anyone else was there” (McGrath, 2017B).

McGrath concludes from these observations that Tamir Rice was not an active shooter and that Garmback should not have treated the situation as such.



Officer Loehmann's administrative review was not related to the Tamir Rice shooting. Instead, Loehmann was charged with several counts of providing false information during his application process. McGrath cites six violations on Loehmann's Personal History Statement when he applied to the CDP in 2013, but they can be summarized as lying about his employment history, specifically the conditions of his resignation with the Independence Police in 2012 and failure to disclose the discharge proceedings (McGrath, 2017C). Loehmann plead not guilty, but McGrath judges otherwise and finds Loehmann guilty of the charges. McGrath cites the instructions on the Personal History Statement - which calls for "discharge after employment" if an applicant fails to "provide complete and truthful information" (McGrath, 2017C) - and concludes that Patrol Officer Timothy Loehmann must be terminated from employment with the CDP, which went into effect that same day.

## **4.4. Other forms of Accountability: The Outliers**

### **4.4.1. McGinty's Reelection**

County Prosecutor Timothy McGinty had to run for reelection in 2016. The general election was scheduled in November, but since no Republican or independent candidates filed in the race, the Democratic candidate would run unopposed, which made the real election for County Prosecutor the Democratic primary of March 15, 2016, less than three months after the conclusion of the grand jury proceedings in the Tamir Rice case.

McGinty was challenged by Michael O'Malley, who officially entered the primary after 24 out of 45 Democratic ward leaders recommended O'Malley as the candidate officially endorsed by the party. Only thirteen ward leaders supported McGinty, while eight abstained from voting (MacDonald, 2015). The party eventually decided not to endorse any candidate, since neither reached the 60 percent threshold when the 443 members of the executive committee made their final decision, but with 55 percent of the vote O'Malley was the clear favorite of local party leadership. (Shaffer, 2015C).

McGinty had already been attacked by activists for his unclear position on the Tamir Rice case during the process. But McGinty was also criticized by police union representatives as well

as judges for his “adversarial and abrasive tactics in investigating police shooting and seeking court reform” (Shaffer, 2015). After the non-indictment of Loehmann and Garmback, opposition to McGinty only grew. Civil rights activists called for the expulsion of McGinty from office and demonstrators picketed McGinty’s house (Palmer, 2015; Scruggs, 2016). From then on it was clear: this election was about McGinty’s handling of the Tamir Rice case and nothing else. O’Malley eagerly sought support from the African-American community throughout the campaign, but their support was informed more by their opposition to McGinty than enthusiasm for O’Malley, which is best exemplified by a statement of Bishop Eugene War Jr.: “Do I pick the witch or the devil? We’re going with the devil you don’t know” (Morris, 2016).

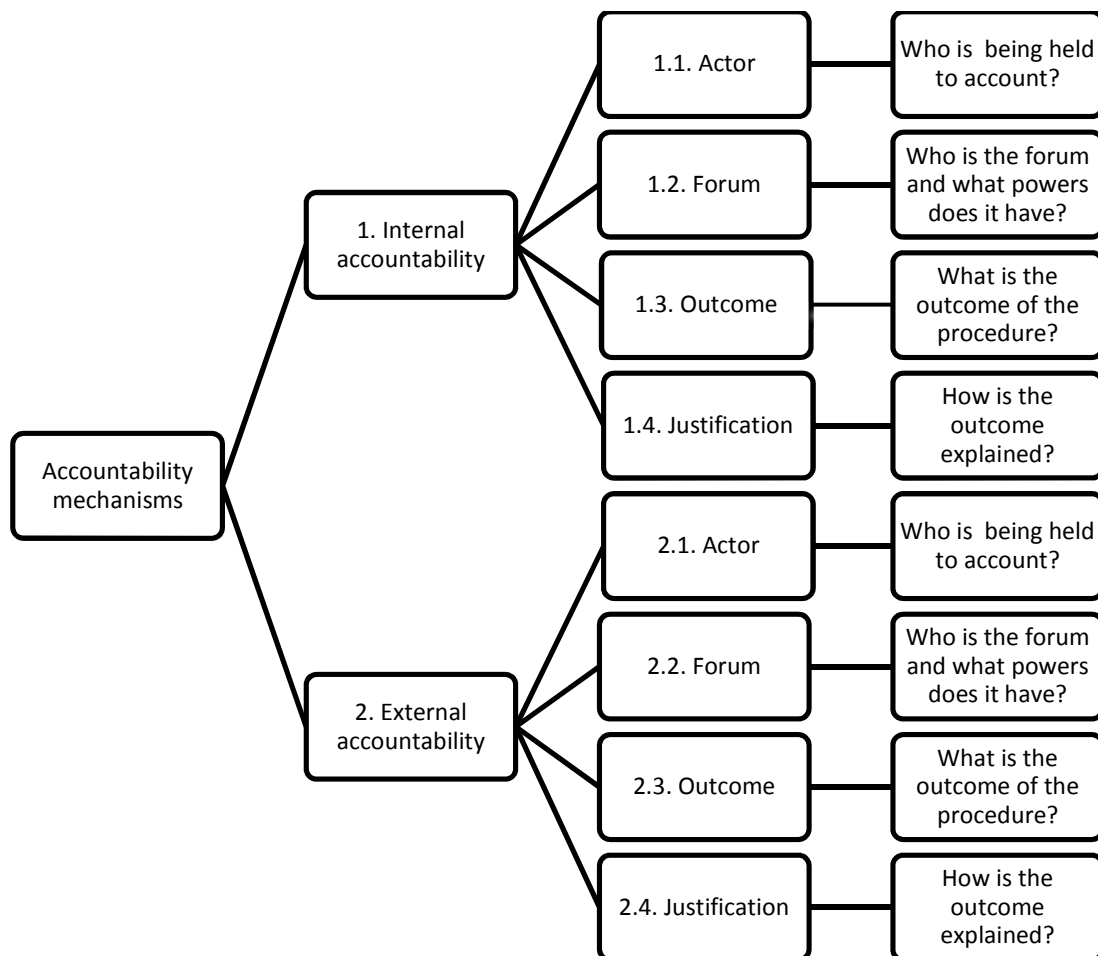
Timothy McGinty conceded his defeat shortly after midnight on March 16, 2016 (Higgs, 2016). O’Malley had won the primary race with an 11.6 percent margin, gathering 55.8 percent of the total vote. The result was immediately declared a victory for Black Lives Matter (Neyfakh, 2016). Evidence of this claim was provided a day later, when Rich Exner published a detailed analysis of the vote. His analysis shows that O’Malley won the 282 black majority precincts with 70 percent of the vote, accumulating a total of 33,649 votes against McGinty’s 14,343 votes. In the other 698 precincts O’Malley actually lost to McGinty by a margin of 1367 votes (Exner, 2016).

On January 3, 2017, Timothy McGinty was released from duty and Michael C. O’Malley was sworn in as Cuyahoga County’s 41<sup>st</sup> County Prosecutor (Shaffer, 2017.)

## 5. Results and Discussion

In the following chapter the operationalization scheme (*figure 2*) will be used to systematically analyze the accountability mechanisms identified in chapter 4. The results of this analysis will be presented in a table at the beginning of each section, after which each element is discussed separately. The analysis will also include a discussion of the results and how they relate to the theoretical insights of chapter 2. The layout of this chapter is based on the previous chapter. Section 5.1. will thus analyze the criminal prosecutions, section 5.2. discusses the tort litigation, section 5.3. the administrative review and section 5.4. the outlier.

*Figure 2: Operationalization Scheme 1*



## 5.1. The Criminal Prosecution

*Table 2: Bovens Applied to the Accountability Mechanism Criminal Prosecution*

<b>Indicator</b>	<b>Finding</b>
2.1. Actor	Ptl. Timothy Loehmann Ptl. Frank Garmback
2.2. Forum	<i>De jure</i> : The Grand Jury <i>De facto</i> : County Prosecutor McGinty
2.3. Outcome	No indictment
2.4. Justification	Objective Reasonableness

### 5.1.1. Analysis of the Results

*Table 2* provides an overview of the application of Bovens' definition of accountability to the criminal prosecution as discussed in chapter 4.2.1.1. As *figure 2* shows, the first indicator of accountability is the actor (2.1.): who is being held to account? In this mechanism the two actors identified are Timothy Loehmann and Frank Garmback. They were the two defendants who possibly could have been indicted by the grand jury.

As seen in *Table 1*, the forum (2.2.) cannot as easily be identified. Officially the grand jury in this case had the power to pass judgement and decide on possible consequences. However, as explained by Flynn (2016), the jury is completely reliant on the prosecutor for information. The prosecutor provides the evidence in the case, explains to the jury the legal process and instructs them on the law. As Flynn explains: "Grand jurors, almost without exception, follow where prosecutors lead them" (Flynn, 2016). So while the grand jury is the *de jure* forum in the criminal prosecution, it is County Prosecutor McGinty who is the *de facto* forum.

The outcome of the mechanism (2.3.) is the refusal of the grand jury to indict the two officers. Their decision was justified (2.4.) with the argument of objective reasonableness. The jury concluded from the video footage that Tamir attempted to pull the gun from his waistband and the officers had no way of knowing that the gun Tamir Rice had on him was fake. The assumptions that this was an active shooter situation and that Tamir posed an immediate threat to

officer Loehmann and officer Garmback were therefore considered objectively reasonable by the grand jury and thus the use of force was justified (McGinty, 2015).

### ***5.1.2. Discussion of the Results***

*Table 2* shows all formal requirements of accountability being present. However, as has been discussed in chapter 4.2.1.1.2., the grand jury process led by Timothy McGinty has been heavily criticized. As Walker (2003) himself already noted, to successfully prosecute an officer is extremely difficult. The Tamir Rice case never even made it to prosecution. The jury accepted the prosecutor's arguments with regards to the objective reasonableness of the incident. The behavior of the prosecutor however, both outside the court and - if one is to believe Flynn - inside the court, raises questions about the intent of the prosecutor. If Flynn's account is correct, McGinty acted as a defense attorney for the officers rather than as an independent prosecutor, a feature several authors have noted is common with local prosecutors (Harris, 2012; Walker, 2005). In 2015, the Guardian published an analysis of all cases where police officers used deadly force, which showed that there were 217 cases where the suspect was cleared by an attorney "who typically works alongside the officer's department" (Swaine, Laughland, Larety and McCarthy, 2015). One of the criminological experts who participated with this piece was Walker himself, who argues

"Prosecutors work with police day in, day out, and typically they're reluctant to criticize (*sic*) them or investigate them...A major change in our standard legal practice, and the structure of our criminal justice system, is required" (Swaine et al., 2015).

What does this mean for the theoretical insights brought forward by Walker (2003) and Bovens (2007)? Walker defines criminal prosecution as judicial accountability, which he classifies as external accountability. But it is difficult to argue that this form of accountability is external when prosecutors show such reluctance to prosecute the people who they basically consider to be colleagues. The behavior of the prosecutor shows various similarities with the behavior of senior officials within the police department when dealing with misconduct (Chan, 1999; Skogan, 2008;

Reiner 2000). This example would suggest that at least in this case, *judicial accountability is a form of internal accountability rather than external accountability*.

These conclusions also raise questions about the definition of Bovens. As shown, this accountability mechanism meets all formal requirements of his definition, but if the *de facto forum* actively worked to protect the *actor*, can it really be called accountability? There is a formal possibility that the accountability mechanism can have serious consequences for the actor, but as Swaine et al. (2015) showed in their analysis, this is hardly ever the case. The main function of this accountability mechanism is to curtail the abuse of executive power (Bovens, 2007: p. 464), but as long as prosecutors act like McGinty and defend rather than prosecute the defendants, this mechanism fails in precisely that function, instead serving solely to legitimize the behavior of government. The public anger after the decision was publicized showed the prosecution did not provide any catharsis, and the functions of ‘democratic control’ and ‘improvement and learning’ are not applicable to this mechanism (Bovens, 2007: pp. 463-464).

## 5.2. Tort Litigation

*Table 3: Bovens applied to the Accountability Mechanism Tort Litigation*

<b>Indicators</b>	<b>Findings</b>
2.1. Actor	City of Cleveland
2.2. Forum	U.S. District Judge Dan Polster
2.3. Outcome	\$6 million settlement
2.4. Justification	<i>No justification</i>

### 5.2.1. Analysis of the Results

Table 3 provides an overview of the application of Bovens’ definition of accountability to the tort litigation as discussed in chapter 4.2.1.2. The forum (2.2.) in this mechanism is clear. It was U.S. District Judge Dan Polster who presided over the settlement talks and he filed the agreement with the court (Heisig, 2016B). The outcome (2.3.) is also clear: a \$5.5 million settlement will be paid

by the City of Cleveland to the Rice estate, as well as \$250,000 each for the mother and sister of Tamir Rice. The justification (2.4.) for this outcome is less clear however. Both parties agreed to the statement that there is no admission of wrongdoing by any defendant. However, \$6 million is a lot of money to pay for something you deny responsibility for. Mayor Jackson called this defense an “accepted legal process” (*TV20 Cleveland*, 2016), and he is of course right about that. It is common practice for defendants in civil cases to settle on a payment to the plaintiff without admitting guilt. However, if indicator 2.4. – how is the outcome explained? - is applied correctly, the only possible answer is that there is no explanation for the outcome. The outcome is the result of a negotiation between the plaintiffs and the defendant, where the forum only acted as mediator and where the motivations of both parties are unknown. The only statements on the outcome from defendants comes from Loehmann and Garmback, who state that they agreed with the outcome because it would resolve the matter swiftly (Heisig, 2016D). Representatives of the plaintiffs noted that although they had accepted the settlement, they did not believe justice had been served (Heisig, 2016B).

So the judge is the forum, the settlement is the outcome and there is no justification for this outcome, but who is the actor (2.1.)? The actor in this second accountability mechanism cannot be identified as easily as with the criminal prosecution. The original civil lawsuit filed by the Rice estate included three defendants: the City of Cleveland, Officer Loehmann, and Officer Garmback. Later, the lawsuit was expanded and would come to include four more defendants: dispatcher Hollinger, dispatcher Mandel, Lieutenant Bindel and Sgt. Santiago. Since each of the defendants was officially held to account, one could argue that each defendant is an actor. However, the outcome of the mechanism (the settlement) will be paid fully by the City of Cleveland. Although they (like all other actors in this process) do not admit to any wrongdoing, this does suggest that the City takes responsibility for all individual actors in the case, and thus represents the collective of actors as being one.

### ***5.2.2. Discussion of the Results***

*Table 3* shows that the tort litigation in this case does not meet all formal requirements of Bovens’ definition, since a real justification for the outcome is missing. Furthermore, the

identification of the actor is not straightforward. The actor can only be explained by applying *Box I* to this mechanism as well. Using Bovens' typology of accountability, tort litigation is a form of *corporate accountability* (Bovens, 2007: p. 458), where the organization functions as an actor representing all individuals operating within the organization. Within this mechanism the City of Cleveland as a whole is representing all actors. Most notable about this is the fact that it is the City, not the Department of Police, which takes responsibility for all actors involved. The settlement is paid from the city's general funds and the CDP has not been billed for the settlement (Swaine, Laughland and Scruggs, 2016).

The analysis of tort litigation being *corporate accountability* again raises questions about the Walker's division between internal and external accountability. If the city is directly responsible for the actions of members of the CDP and can be held to account for those actions, then the city and the CDP cannot be seen as separate actors and thus should accountability by the CDP to the city be considered *as internal and not as external accountability*.

From Walker's discussion of tort litigation one can conclude that its main function is 'learning and improvement' (Bovens, 2007: pp. 463-464), although Walker also points out that there is little evidence to support this claim (Walker, 2003). Whether this mechanism has successfully fulfilled this function in this case cannot be concluded. No official policy adjustment has been announced as the result of this mechanism. However, in this light it is important to understand the impact of the Consent Decree, which requires an overhaul of several policies related to the use of force and accountability procedures (*USA v. Cleveland*, 2015). So while this mechanism has not directly resulted in 'learning', there is a 'learning' process set in motion simultaneously through a different process. Furthermore, the tort litigation to some extent provides catharsis (although the family and civil rights activists claim that the settlement does not equate to justice). Finally, since the city council will provide the funds for the settlement, there is a form of democratic accountability, where accountability can be enforced through elected officials who have to account for this expenditure to the voters, and who in turn can call the CDP to account for its actions, although no evidence was found in this case that actually showed elected officials holding the CDP to account.



### 5.3. Administrative Review

*Table 4: Bovens Applied to the Accountability Mechanism Administrative Review (Timothy Loehmann)*

<b>Indicators</b>	<b>Findings</b>
1.1.Actor	Ptl. Timothy Loehmann
1.2.Forum	Safety Director Michael McGrath
1.3.Outcome	Terminated from duty.
1.4.Justification	Lying on his Personal History Statement during his employment application process in 2013.

*Table 5: Bovens Applied to the Accountability Mechanism Administrative Review (Frank Garmback III)*

<b>Indicators</b>	<b>Findings</b>
1.1.Actor	Ptl. Frank Garmback III
1.2.Forum	Safety Director Michael McGrath
1.3. Outcome	1. 10-day suspension without pay; 2. Required to follow an additional tactical training course.
1.4. Justification	1. Failure to communicate arrival and coordinate with primary zone car; 2. Failure to employ proper tactics when operating the zone car.

*Table 6: Bovens Applied to the Accountability Mechanism Administrative Review ( William Cunningham)*

<b>Indicators</b>	<b>Findings</b>
1.1. Actor	Ptl. William Cunningham
1.2. Forum	Safety Director Michael McGrath
1.3.Outcome	2-day suspension without pay.
1.4. Justification	Secondary employment without approval.

*Table 7: Bovens Applied to the Accountability Mechanism Administrative Review (Constance Hollinger)*

<b>Indicators</b>	<b>Findings</b>
1.1.Actor	911-Dispatcher Constance Hollinger
1.2.Forum	Chief of Police Calvin D. Williams
1.3.Outcome	8-day suspension without pay.
1.4.Justification	Failure to transfer pertinent information

### **5.3.1. Analysis of the Results**

The administrative review resulted in not one, but four accountability mechanisms if all formal requirements by Bovens are applied to this mechanism. The actors (1.1.) in these four mechanisms were the four individuals who saw administrative charges being put forward against them: Loehmann (*Table 4*), Garmback (*Table 5*), Cunningham (*Table 6*), and Hollinger (*Table 7*). The forum (1.2.) in these cases was the person responsible for reviewing the administrative charges and for deciding on the outcome, which was either Safety Director Michael McGrath (*Table 4/5/6*) or Chief Williams (*Table 7*).

Each actor faced different charges and therefore saw a different outcome (1.3.). The outcome of Cunningham’s hearing (*Table 6*), a 2-day suspension without pay, is the expected result, since he did not contest the charge he was eventually suspended for. The outcome (1.3.) for Cunningham was justified (1.4.) by his failure to request permission for second employment. However, in his specification McGrath notes that Cunningham had filed a second employment request for the same employer in 2012 which had been approved, but the authorization of this request had expired on June 30, 2014. Furthermore, Cunningham had been informed in early 2015 by Sgt. Stacho that he had not submitted any paperwork for secondary employment, but he failed to act and reapply until September 2015 (McGrath, 2015). These details were considered as aggravating factors by McGrath, and as such affected the outcome of the case.

Equally unsurprising was the outcome for Constance Hollinger (*Table 7*). Although Hollinger plead not guilty to the charge of omitting crucial information from her message to the officers, it was a difficult claim to maintain. Not only was the entire dispatching message recorded and part of the public record, her omission of the information was a central part of the

defense of Loehmann and Garmback. It had been used as a talking point by police spokesmen (and women) shortly after the shooting (Fitzsimmons, 2014), and Prosecutor McGinty had argued in court that the omission was one of the main causes of the shooting (Ferrise, 2017A). By arguing (1.4.) that the omission was indeed in violation of dispatch policies, Chief Williams justified the outcome (1.3.): an 8-day suspension without pay.

Officer Loehmann (*Table 4*) would face the harshest outcome (1.3.): he was terminated from the CDP, effective immediately. The justification (1.4.) of this outcome had nothing to do with the Tamir Rice shooting. Loehmann was discharged as the result of lying during his application process in 2013, when he omitted that his previous employer would have discharged him if he had not resigned voluntarily, which became known when journalists started to investigate Loehmann's background as a result of the shooting.

The most controversial outcome is the outcome for Officer Frank Garmback, who (1.3.) has been suspended for ten days and who is required to follow an additional tactical training course. The outcome of his hearing was based (1.4.) on the failure to communicate and coordinate with the primary zone car, as well as his failure to employ proper tactics. However, this second charge is disputed. While all other outcomes can be directly traced back to either the CIRC (2017) investigation or the IAU report (2015), these two reports drew a different conclusion on this count. The conclusion of the IAU investigation in this matter was that Garmback had violated lessons from two training sessions taking place in 2012 and 2013, while the CIRC report found no violation of official police policies. The assertion from the IAU that violating training procedures equals violating official policies has been made without citing any actual policies being violated (CDP IAU. 2015).

### ***5.3.2. Discussion of the Results***

All four tables show that Bovens' formal requirements are met by the administrative review. All indicators were clearly identifiable in each individual case. However, if the mechanism is viewed strictly in terms of accountability for the shooting of Tamir Rice, only two of the four procedures

apply, since both Cunningham and Loehmann faced charges unrelated to the incident itself. The outcome of their procedures were instead justified with information that was obtained through investigating the Tamir Rice shooting, but was in itself unrelated to the case.

The outcome of the procedures for Hollinger and Garmback are directly related to the Tamir Rice shooting. Hollinger's suspension is undisputed. The only question one could pose in this regard is whether the process for Hollinger was truly fair. If the police themselves have used her faulty behavior as the excuse for the behavior of others, it would at the least be surprising if the charges based on precisely that same behavior would have been dismissed by that same organization. Notable here is the fact that she is the only actor where the forum (1.2.) was not McGrath, but Chief Williams himself. Nonetheless, there was a clear body of evidence against her and the outcome was well-motivated.

The outcome for Patrol Officer Garmback is at least partly questionable based on the reports, since the evidence that (part of) the justification was based on a violation of actual policies is unclear and disputed.

Similar to the *tort litigation* mechanism, the administrative review shows Walker's distinction between internal and external accountability to be problematic. The administrative review hearings are officially presided over by Public Safety Director McGrath, but his review is informed by recommendations of the Chief of Police, and that same chief of police replaces McGrath in one of the four procedures (*Table 7*). It again shows that the line between the CDP and the City as a whole is organizationally blurred.

The administrative review focused entirely on the violation of any rules, regulations or official policies, and is therefore a prime example of accountability in order to prevent corruption and curtail the abuse of power (Bovens, 2007: pp. 463-464). Since the accountability was completely focused on the individuals, there was no 'learning' during this process, and there was no form of 'democratic control' either. The administrative review provides a level of catharsis, since the termination of Loehmann was one of the prime demands of the Rice estate, although they did argue that the other outcomes were too soft and failed to address the seriousness of this case. The administrative also provides a level of legitimacy for the CDP and the city, since it is

the only form of accountability where anyone was actually punished for wrongdoing. Furthermore, the conviction of individual actors on the basis of policy violations does legitimize the organization as a whole, since it explains the outcome of the Tamir Rice shooting as the result of policy violations, rather than the shooting being the result of faulty policies.

## 5.4. The Outlier

*Table 8: Bovens Applied to the Outlier*

<b>Indicators</b>	<b>Findings</b>
2.1. Actor	County Prosecutor Timothy McGinty
2.2. Forum	The (Democratic Primary) Voter
2.3. Outcome	Losing reelection for the Office of County Prosecutor.
2.4. Justification	Failure to indict officers Loehmann and Garmback

### 5.4.1. Analysis and Discussion of the Results

Democratic elections are not part of Walker’s framework, since public officials other than the those directly employed by the police department are not considered part of the police organization and thus don’t fit the structural framework of police accountability. However, to some extent all formal requirements of Bovens are applicable to this election with a justification related to the Tamir Rice incident. In the election for the Office of County Prosecutor, actor (2.1.) Timothy McGinty has been held to account for his work as County prosecutor by the (Democratic primary) voters of Cuyahoga County. As has been shown by an analysis of the vote (Exner, 2016), McGinty’s (2.3.) loss in the primaries was a direct result of his (1.4.) unpopularity with the African-American community, which has been argued was the direct result of his failure to indict officers Loehmann and Garmback (Morris, 2016). Whether McGinty was truly voted out of office as a direct result of the Tamir Rice shooting cannot be stated with certainty, but all evidence from the campaign and the election result does support such a claim.

However, this thesis argues that McGinty's removal from office is not an example of accountability in the case of Tamir Rice, but an example of secondary accountability. After all, it is not an actor involved in the incident itself who is held to account, but a *forum*, who itself has the responsibility to hold actors to account, that is being held to account by the public.

Nonetheless, McGinty's removal from office is a prime example of 'Democratic Control', where elected public officials are held to account by the voters for conduct by the government. It also serves the 'learning' function, since it sends a message to all prosecutors that voters will take their actions in cases like these seriously and expect serious prosecution of police officers by the prosecutor in cases of alleged misconduct. Furthermore, by holding the judicial power directly to account for its actions in this case, the removal of McGinty is also an example of the curtailing of corruption. The voters demand that the prosecutor acts independently from the executive branch and thus serves as a balancing power to the power of the executive branch. Finally, since civil rights activists and the Rice estate considered McGinty's behavior as negligent and had already requested his removal from the case (Golston, 2015), this mechanism also serves the function of catharsis

## 6. Conclusion

This thesis applied theoretical insights from Bovens (2007) and Walker (2003) to the shooting of Tamir Rice in order to further the debate on accountability in cases of deadly use of force by police officers. The shooting of Tamir Rice has been described by everybody involved in the case as a “tragic incident” and several accountability mechanisms were triggered after the incident to ensure accountability. This thesis has identified four mechanisms: the criminal prosecution of Timothy Loehmann and Frank Garmback; the tort litigation filed by the Rice estate against the City of Cleveland; The administrative charges put forward against Officer Loehmann, Officer Garmback, Officer Cunningham, and 911-Dispatcher Hollinger; and the removal from office of County Prosecutor Timothy McGinty. The formal requirements of accountability, as identified by Bovens (2007), can be applied to all mechanisms identified, with the exception of the tort litigation, where no justification has been offered for the outcome of the procedure. This can only be explained by the fact that this has been agreed upon by all parties involved in order to achieve the desired outcome.

When applying Walker’s structure to the case of Tamir Rice, it becomes clear that his distinction between internal and external accountability is problematic. Every accountability mechanism identified in the Tamir Rice case shows that the clear line drawn by Walker (2003) to distinct internal police accountability from external mechanisms like criminal prosecution, fails to take into account the intimate relationship between the police and other governmental agencies involved in law enforcement. As discussed in section 5.1.2., there is such a close working relationship between the police and public prosecutors, that they consider each other to be coworkers. The behavior of prosecutor McGinty can therefore be explained better by comparing him to superior officers conducting an internal investigation (Chan, 1999), than by considering him as an external, independent auditor of the police. The tort litigation shows the City of Cleveland functioning as an corporate actor, responsible for the actions of the CDP as well. Although no form of legislative accountability has been identified in this case, one can conclude from section 5.2.2. that the city government is not an independent, external forum in relationship to the CDP, and that if legislative accountability was enacted by the city government, this should be considered internal accountability as well.

All functions of accountability can be identified in this case. With the removal of McGinty from office, there is at least one case of ‘democratic control’. The administrative charges show an attempt to curtail ‘the abuse of power’, and the tort litigation is at least an attempt of ensuring government ‘learns’ from this case, although whether the government actually does learn remains an open question. Legitimizing government policy has been achieved by holding individual actors to account for policy violations, and catharsis has at least partly been achieved through the tort litigation, the termination of officer Loehmann and the removal of McGinty from the Office of County Prosecutor. All this leads us back to the Research Question posed at the beginning of this thesis:

*How can theories of Bovens (2007) and Walker (2003) on accountability explain the deadly police shooting of Tamir Rice?*

By applying the theories from Bovens and Walker to the deadly police shooting of Tamir, it is clear that in cases of deadly use of force several accountability mechanisms are activated. However, an analysis of these mechanisms shows that their results are mixed at best. Of the eight accountability mechanisms identified in this case, one was concluded by exoneration of the defendants (*Table 2*), one resulted in a settlement without justification (*Table 3*), two resulted in an outcome justified by circumstances unrelated to the incident (*Table 4/6*) and one was only indirectly related to the Tamir Rice shooting (*Table 8*). Only two actors, namely Dispatcher Hollinger (*Table 7*) and Officer Garmback (*Table 5*) faced consequences as a direct result of their actions prior to or during the shooting of Tamir Rice. And the consequences for them are limited, with one serving an 8-day suspension and the other serving a 10-day suspension, both without pay.

The case of Tamir Rice is a prime example of the difficulty of achieving accountability. Although there are extensive accountability mechanisms set in motion by the incident, there is no one person or organization truly held to account. Either the actor is exonerated, the actor settles without admitting guilt, or the actor is punished for something unrelated to the incident itself. And when someone actually faces consequences for the incident, that someone is neither



the main character of those held to account, nor is his punishment severe enough in the eyes of the public. Like many other recent cases where police use of force resulted in the death of a civilian, the public is left behind with a feeling of injustice, as is expressed by Mayor Jackson:

"The public does not believe that the system has been fair with them. And I'm not just talking about Cleveland, I'm talking about nationwide. There is a real legitimate sense of lack of fairness and a lack of justice on behalf of people who have been in some way harmed by the system. There is a legitimate concern, and we don't want to be a part of that" (*TV20 Cleveland*, 2015).

## 7. Bibliography

### 7.1. Scholarly Literature

- Bayley, David. 1995. 'Getting Serious About Police Brutality', pp. 93-109 in: Philip C. Stenning (ed.). *Accountability for Criminal Justice; Selected Essays*. Toronto: University of Toronto Press.
- Bovens, Mark. 2007. 'Analysing and Assessing Accountability: A Conceptual Framework'. *European Law Journal*. Vol. 13 (4): pp. 447-468.
- Bovens, Mark. 2010. 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism'. *West European Politics*. Vol. 33 (5): pp. 946-967.
- Brown, Jill I. 1991. 'Defining Reasonable Police Conduct: *Graham v. Connor* and Excessive Force During Arrest'. *UCLA Law Review*. Vol. 38: pp. 1257-1286.
- Chan, Janet B.L. 1999. 'Governing Police Practice: Limits of the New Accountability'. *British Journal of Sociology*. Vol. 50 (2): pp. 251-270.
- Chermak, Steven, Edmund McGarrell, and Jeff Gruenewald. 2006. 'Media Coverage of Police Misconduct and Attitudes Towards the Police'. *Policing: An International Journal of Police Strategies & Management*. Vol. 29 (1): pp. 261-281.
- Dubnick, Melvin J. 2002. *Seeking Salvation for Accountability*. Paper presented at the Annual Meeting of the American Political Science Association. Retrieved from <http://mjdubnick.dubnick.net/papersrw/2002/salv2002.pdf>. Last visited 22-03-2017.
- Harris, David A. 2012. 'The Interaction and Relationship Between Prosecutors and Police Officers in the United States, and How This Affects Police Reform Efforts'. In: Erik Luna and Marianne Wade (ed.). *The Prosecutor in Transnational Perspective*. Oxford: Oxford University Press.
- Jacob, Kyle J. 2016. 'From *Garner* to *Graham* and Beyond: Police Liability for Use of Deadly Force – Ferguson Case Study'. *Chicago-Kent Law Review*. Vol. 91 (1): pp. 325-360.
- Jones, Trevor, Tim Newburn, and David J. Smith. 1996. 'Policing and the Idea of Democracy'. *British Journal of Criminology*. Vol. 36 (2): pp. 182-198.
- Lister, Stuart, and Michael Rowe. 2015. 'Accountability of Policing', pp. 1-17 in: Stuart Lister. *Accountability of Policing*. London: Routledge.

- Lister, Stuart. 2015. *Accountability of Policing*. London: Routledge.
- Lersch, Kim Michelle. 1999. 'Police Misconduct and Minority Citizens: Exploring Key Issues'. *The Justice Professional*. Vol. 12 (1): 65-82.
- Newburn, Tim, and Robert Reiner. 2007. 'Policing and the Police', pp. 910-952 in: Maguire, Mike, Rod Morgan, and Robert Reiner (ed.). *The Oxford Handbook of Criminology* (4<sup>th</sup> edit.). Oxford: Oxford University Press.
- Ponsaers, Paul. 2001. 'Reading about "Community (Oriented) Policing" and Police Models'. *Policing: An International Journal of Police Strategies & Management*. Vol. 24: pp. 470-497.
- Ponsaers, Paul. 2015. 'Is Legitimacy Police Property?' In: Gorazd Meško and Justice Tankebe (ed.). 2015. *Trust and Legitimacy in Criminal Justice; European Perspectives*. Basel: Springer International Publishing.
- Reiner, Robert. 2000. *The Politics of the Police*. (3<sup>rd</sup> edit.) Oxford: Oxford University Press.
- Reiner, Robert. 1995. 'Counting the Coppers: Antinomies of Accountability in Policing', pp. 74-92 in: Philip C. Stenning (ed.). *Accountability for Criminal Justice; Selected Essays*. Toronto: University of Toronto Press.
- Skogan, Wesley. G. 2008. 'Why Reforms Fail'. *Policing & Society*. Vol. 18 (1): pp. 23-34.
- Stenning, Philip C. 1995. 'Introduction', pp. 3-14 in: Stenning, Philip C. (ed.). *Accountability for Criminal Justice; Selected Essays*. Toronto: University of Toronto Press.
- Stenning, Philip C. (ed.). 1995. *Accountability for Criminal Justice; Selected Essays*. Toronto: University of Toronto Press.
- Swanborn, Peter. (1994). 'Het Ontwerpen van Case-studies: Enkele Keuzen'. *Mens en Maatschappij*, Vol. 69 (3): pp. 322 – 335.
- Walker, Samuel E. 2003. 'The New Paradigm of Police Accountability: The U.S. Justice Department "Pattern or Practice" Suits in Context'. *Saint Louis University Public Law Review*. Vol. 22: pp. 3-52.
- Walker, Samuel. 2005. *The New World of Police Accountability*. Thousand Oaks, CA: Sage Publications Ltd.

- Walker, Samuel E. 2012. 'Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure'. *Saint Louis University Public Law Review*. Vol. 32: pp. 57-91.
- Walker, Samuel E. 2016. 'The Community Voice in Policing: Old Issues, New Evidence'. *Criminal Justice Policy Review*. Vol. 25 (5): pp. 537-552.
- Yin, R. K. (2009) *Case Study Research: Design and Methods*. Thousand Oaks, CA: SAGE Publications Ltd.
- Yin, Robert K. 2012. *Applications of Case Study Research*, 3<sup>rd</sup> edit. Thousand Oaks, CA: Sage Publications Ltd.

## 7.2. Sources for Empirical Research

- Atassi, Leila. 2015. 'Cleveland Police to Launch Administrative Review of Tamir Rice Shooting'. *Cleveland.com*, December 28. Retrieved from [http://www.cleveland.com/cityhall/index.ssf/2015/12/cleveland\\_police\\_to\\_launch\\_admin.html](http://www.cleveland.com/cityhall/index.ssf/2015/12/cleveland_police_to_launch_admin.html). Last visited June 8, 2017.
- Baker, Al, J. David Goodman and Benjamin Mueller. 2015. 'Beyond the Chokehold: The Path to Eric Garner's Death'. *New York Times*, June 13. Retrieved from <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-statens-island.html>. Last visited June 8, 2017.
- Berman, Mark, and Wesley Lowery. 2015. 'Cleveland Judge Finds Probable cause for murder charge in Tamir Rice Shooting'. *Washington Post*, June 11. Retrieved from [https://www.washingtonpost.com/news/post-nation/wp/2015/06/11/cleveland-judge-finds-probable-cause-for-murder-charge-in-tamir-rice-shooting/?utm\\_term=.8c4a6b7759de](https://www.washingtonpost.com/news/post-nation/wp/2015/06/11/cleveland-judge-finds-probable-cause-for-murder-charge-in-tamir-rice-shooting/?utm_term=.8c4a6b7759de). Last visited June 8, 2017.
- Blackwell, Brandon. 2014. 'Cleveland Police Officers Waited Minutes to Give First Aid to Tamir Rice'. *Cleveland.Com*, November 26. Retrieved from [http://www.cleveland.com/metro/index.ssf/2014/11/cleveland\\_police\\_officers\\_wait.html#incart\\_big-photo](http://www.cleveland.com/metro/index.ssf/2014/11/cleveland_police_officers_wait.html#incart_big-photo) Last visited June 8, 2017.
- Blackwell, Brandon. 2015. ' 'Indisputable' Images of Tamir Rice Pulling Replica Gun Was Turning Point in Case, Prosecutor Says'. *Cleveland.com*, December 29. Retrieved

from

[http://www.cleveland.com/metro/index.ssf/2015/12/indisputable\\_images\\_of\\_tamir\\_r.html#incart\\_article\\_small](http://www.cleveland.com/metro/index.ssf/2015/12/indisputable_images_of_tamir_r.html#incart_article_small). Last visited June 8, 2017.

- Blinder, Alan. 2017. 'Ex-Officer Who Shot Walter Scott Pleads Guilty in Charleston'. *The New York Times*, May 2. Retrieved from <https://www.nytimes.com/2017/05/02/us/michael-slager-walter-scott-north-charleston-shooting.html>. Last visited June 8, 2017.
- Blow, Charles M. 2015. 'Privilege of 'Arrest Without Incident''. *New York Times*, January 4. Retrieved from <https://www.nytimes.com/2015/01/05/opinion/charles-blow-privilege-of-arrest-without-incident.html>. Last visited June 8, 2017.
- Booth, Jenny. 2014. 'Video Show How Police Shot Black Boy, 12, in Seconds'. *The Times*, November 27.
- Campbell, Andy. 2015. 'Prosecutor Releases Investigation Into Tamir Rice's Death'. *The Huffington Post*, June 13. Retrieved from [http://www.huffingtonpost.com/2015/06/13/tamir-rice-tim-loehmann-investigation-documents\\_n\\_7577384.html](http://www.huffingtonpost.com/2015/06/13/tamir-rice-tim-loehmann-investigation-documents_n_7577384.html). Last visited June 8, 2017.
- Capecchi, Christina and Mitch Smith. 2016. 'Officer Who Shot Philando Castile Is Charged With Manslaughter'. *The New York times*, November 16. Retrieved from <https://www.nytimes.com/2016/11/17/us/philando-castile-shooting-minnesota.html>. Last visited June 8, 2017.
- Carissimo, Justin. 2015. 'Family of Tamir Rice Awaits Justice with Pending Wrongful Death Suit'. *The Independent*, December 29.
- *CBS News*. 2016. '6 Cleveland Cops Fired Over 2012 Chase, 137-shot Barrage'. January 26. Retrieved from <http://www.cbsnews.com/news/6-cleveland-cops-fired-over-2012-chase-137-shot-barrage/>. Last visited June 8, 2017.
- Ciaccia, Jennifer and Daniel Williams. 2017. 'Officer involved Shooting Discipline Update'. *Cleveland Division of Police*, May 30. Retrieved from [http://city.cleveland.oh.us/sites/default/files/pressReleases/PRESS%20RELEASE%20Officer%20Discipline%20Garmback%2C%20Loehmann\\_final.pdf](http://city.cleveland.oh.us/sites/default/files/pressReleases/PRESS%20RELEASE%20Officer%20Discipline%20Garmback%2C%20Loehmann_final.pdf). Last visited June 8, 2017.
- *City of Cleveland*. 2017. 'Mayor Jackson and Chief Williams Announce Administrative Charges for Police Officers Loehmann, Garmback, and Cunningham'. January 13.

Retrieved from

<http://www.city.cleveland.oh.us/1.13.2017AdministrativeChargesForPolice>. Last visited June 8, 2017.

- *Cleveland.com*. 2014. 'Cleveland Officials Discuss the Tamir Rice Shooting'. November 24. Retrieved from <https://www.youtube.com/watch?v=SK8jMqneWEg>. Last visited June 8, 2017.
- *Cleveland Leader*. 2014. '911 Call Before 12 Year Tamir Rice Was Killed by Police'. November 26. Retrieved from <https://www.youtube.com/watch?v=epfXeDxftQA>. Last visited June 8, 2017.
- Cleveland Division of Police: Internal Affairs Unit ('CDP IAU'). 2015. *Investigative Report 2014-092: Use of Deadly Force Investigation Team 2014-020 Administrative Review*. February 9. Retrieved from [https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AABPS1s8y5g\\_pptRyUYI0g1oa?dl=0&preview=IA+Report.pdf](https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AABPS1s8y5g_pptRyUYI0g1oa?dl=0&preview=IA+Report.pdf). Last visited June 8, 2017.
- *CNN*. 2014. 'Video Shows Police Shooting of 12-Year-Old'. November 26. Retrieved from <https://www.youtube.com/watch?v=MSNbpvX1qYc>. Last visited June 8, 2017.
- Critical Incident Review Committee (CIRC). 2017. *Tamir Rice Incident*. Retrieved from [file://vuw/Personal\\$/Homes/09/s0951269/Downloads/CIRC%20Report.pdf](file://vuw/Personal$/Homes/09/s0951269/Downloads/CIRC%20Report.pdf). Last visited June 8, 2017.
- Cuyahoga County Sheriff's Department. 2015. *CCSD Case #15-004 Use of Deadly Force Incident*. June 2. Retrieved from <https://www.themarshallproject.org/documents/2102450-tamir-rice-investigation-report#.0AhC61ZbE>. Last visited June 8, 2017.
- *Democracy Now*. 2016. 'Pastor on Tamir Rice Shooting: Ohio Is an Open-Carry State Except if You're an African-American Male'. July 21. Retrieved from [https://www.youtube.com/watch?v=tfdszFTz\\_TE](https://www.youtube.com/watch?v=tfdszFTz_TE). Last visited June 8, 2017.
- Department of Justice's Civil Rights Division. N.D. *Police Reform and Accountability Accomplishments Under Attorney General Eric Holder*. Retrieved from <https://www.justice.gov/file/180581/download> Last visited June 8, 2017.
- Editorial Board. 2014. 'Video of Cleveland Police Shooting of Tamir Rice Raises Disturbing Questions: Editorial'. *Cleveland.com*, November 26. Retrieved from

- [http://www.cleveland.com/opinion/index.ssf/2014/11/video\\_of\\_tamir\\_rice\\_shooting\\_b.html](http://www.cleveland.com/opinion/index.ssf/2014/11/video_of_tamir_rice_shooting_b.html). Last visited June 8, 2017.
- Exner, Rich. 2016. ‘Vote in Black Communities Sweeps Michael O’Malley to Victory Over Cuyahoga County Prosecutor Timothy McGinty’. *Cleveland.com*, March 17. Retrieved from [http://www.cleveland.com/datacentral/index.ssf/2016/03/vote\\_in\\_black\\_communities\\_sw.html](http://www.cleveland.com/datacentral/index.ssf/2016/03/vote_in_black_communities_sw.html). Last visited June 8, 2017.
  - Fausset, Richard and Alan Binder. 2016. ‘Charlotte Officer ‘Justified’ in Fatal Shooting of Keith Scott’. *The New York Times*, November 30. Retrieved from <https://www.nytimes.com/2016/11/30/us/charlotte-officer-acted-lawfully-in-fatal-shooting-of-keith-scott.html>. Last visited June 8, 2017.
  - Feran, Tom. 2014. ‘Family of Tamir Rice Sues Cleveland, Police for Wrongful Death’. *The Plain Dealer*, December 5. Retrieved from [http://www.cleveland.com/metro/index.ssf/2014/12/family\\_of\\_tamir\\_rice\\_sues\\_city.html](http://www.cleveland.com/metro/index.ssf/2014/12/family_of_tamir_rice_sues_city.html). Last visited June 8, 2017.
  - Ferrise, Adam. 2014. ‘Cleveland Officer Who Shot Tamir Rice Had ‘Dismal’ Handgun Performance for Independence Police’. *Cleveland.com*, December 3. Retrieved from [http://www.cleveland.com/metro/index.ssf/2014/12/cleveland\\_police\\_officer\\_who\\_s.html#incart\\_m-rpt-1](http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_officer_who_s.html#incart_m-rpt-1). Last visited June 8, 2017.
  - Ferrise, Adam. 2014. ‘Cleveland Police Never Reviewed Independence Personnel File Before Hiring Officer Who Shot Tamir Rice’. *Cleveland.com*, December 3. Retrieved from [http://www.cleveland.com/metro/index.ssf/2014/12/cleveland\\_police\\_never\\_reviewe.html](http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_never_reviewe.html). Last visited June 8, 2017.
  - Ferrise, Adam. 2017A. ‘Tamir Rice 911 Call-Taker Suspended’. *Cleveland.com*, March 14. Retrieved from [http://www.cleveland.com/metro/index.ssf/2017/03/tamir\\_rice\\_911\\_call-taker\\_susp.html](http://www.cleveland.com/metro/index.ssf/2017/03/tamir_rice_911_call-taker_susp.html). Last visited June 8, 2017.
  - Ferrise, Adam. 2017B. ‘Cleveland Critical Incident Review Committee Found No Violations in Officers’ Response in Tamir Rice Shooting’. *Cleveland.com*, April 28. Retrieved from

[http://www.cleveland.com/metro/index.ssf/2017/04/clevelands\\_critical\\_incident\\_r.html](http://www.cleveland.com/metro/index.ssf/2017/04/clevelands_critical_incident_r.html).

Last visited June 8, 2017.

- Fitzsimmons, Emma G. 2014A. 'Boy Dies After Police in Cleveland Shoot Him'. *New York Times*, November 24.
- Fitzsimmons, Emma G. 2014B. 'Video Shows Cleveland Officer Shot Boy in 2 Seconds'. *New York Times*, November 26. Retrieved from [https://www.nytimes.com/2014/11/27/us/video-shows-cleveland-officer-shot-tamir-rice-2-seconds-after-pulling-up-next-to-him.html?\\_r=0](https://www.nytimes.com/2014/11/27/us/video-shows-cleveland-officer-shot-tamir-rice-2-seconds-after-pulling-up-next-to-him.html?_r=0). Last visited June 8, 2017.
- Flynn, Sean. 2016. 'The Tamir Rice Story: How to Make a Police Shooting Disappear'. *GQ*, July 14. Retrieved from <http://www.gq.com/story/tamir-rice-story>. Last visited June 8, 2017.
- Ford, Glen. 2015. 'Black Lives Matter: Tamir Rice and the Meaning of "No Justice – No Peace"'. *Global Research*, June 19. Retrieved from <http://www.globalresearch.ca/black-lives-matter-tamir-rice-and-the-meaning-of-no-justice-no-peace/5456783>. Last visited June 8, 2017.
- Fortin, Jacey and Jonah Engel Bromwich. 2017. 'Cleveland Police Officer Who Shot Tamir Rice Is Fired'. *The New York Times*, May 30. Retrieved from <https://www.nytimes.com/2017/05/30/us/cleveland-police-tamir-rice.html>. Last visited June 8, 2017.
- *FOX4News.com*. 2017 'Arlington to Settle With Family of Man Killed in Police Shooting'. May 23. Retrieved from <http://www.fox4news.com/news/256424737-story>. Last visited June 8, 2017.
- *Gallup*. 2016. 'Public Opinion Context: Americans, Race and Police'. July 8. Retrieved from <http://www.gallup.com/opinion/polling-matters/193586/public-opinion-context-americans-race-police.aspx>. Last visited June 8, 2017.
- Gillispie, Mark. 2014. 'Ohio Crowd Protests Over Boy Shot by Police'. *Associated Press*, November 26.
- Golston, Hilary. 2015. 'Exclusive: McGinty Questions Rice Family Motives'. *Delaware Online*, November 6. Retrieved from <http://www.delawareonline.com/story/news/2015/11/07/exclusive--mcginty-questions-rice-family-motives/75319646/> Last visited June 8, 2017.



- Graham, David A. 2016. 'Will a \$6 Million Tamir Rice Settlement Help Reform Cleveland Cops?' *The Atlantic*, April 25. Retrieved from <https://www.theatlantic.com/national/archive/2016/04/tamir-rice-settlement-cleveland/479691/>. Last visited June 8, 2017.
- Gurman, Sadie. 2014. 'Thousands Rally Across U.S. After Ferguson Decision'. *Associated Press*, November 25.
- Hanna, Jason. 2014. 'Video: Boy with Air Gun Was Shot 2 Seconds after Cleveland Police Arrived'. *CNN*, November 26.
- Hayes, Chris. 2014A. 'What Happened to Tamir Rice?' *MSNBC*, December 1. Retrieved from <http://www.msnbc.com/all-in/watch/what-happened-to-tamir-rice--366078531874>. Last visited June 8, 2017.
- Hayes, Chris. 2014B. 'Police Union Chief Calls Killing of 12-Year-Old Justified'. *MSNBC*, December 15. Retrieved from <http://www.msnbc.com/all-in/watch/police-union-chief-tamir-rice-killing-justified-373082691506>. Last visited June 8, 2017.
- Heisig, Eric. 2015. 'Tamir Rice Family Seeks to Amend Lawsuit Against City of Cleveland'. *Cleveland.com*, October 15. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2015/10/tamir\\_rices\\_family\\_seeks\\_to\\_am.html](http://www.cleveland.com/court-justice/index.ssf/2015/10/tamir_rices_family_seeks_to_am.html). Last visited June 8, 2017.
- Heisig, Eric. 2016A. 'Tamir Rice Family, Cleveland Officials Will Hold Settlement Talks, Court Records Say'. *Cleveland.com*, March 8. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2016/03/tamir\\_rice\\_family\\_cleveland\\_of.html](http://www.cleveland.com/court-justice/index.ssf/2016/03/tamir_rice_family_cleveland_of.html). Last visited June 8, 2017.
- Heisig, Eric. 2016B. 'City of Cleveland to Pay \$6 Million to Tamir Rice's Family to Settle Lawsuit'. *Cleveland.com*, April 25. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2016/04/city\\_of\\_cleveland\\_to\\_pay\\_6\\_mil.html](http://www.cleveland.com/court-justice/index.ssf/2016/04/city_of_cleveland_to_pay_6_mil.html). Last visited June 8, 2017.
- Heisig, Eric. 2016C. 'Cleveland's \$6 Million Settlement in Tamir Rice Case Likely City's Largest for a Police Shooting'. *Cleveland.com*, April 25. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2016/04/cleveland\\_6\\_mil\\_settlement\\_in\\_tamir\\_rice\\_case.html](http://www.cleveland.com/court-justice/index.ssf/2016/04/cleveland_6_mil_settlement_in_tamir_rice_case.html).

- [justice/index.ssf/2016/04/clevelands\\_6\\_million\\_settlement\\_1.html](http://www.cleveland.com/court-justice/index.ssf/2016/04/clevelands_6_million_settlement_1.html). Last visited June 8, 2017.
- Heisig, Eric. 2016D. ‘Attorney for Officers in Tamir Rice Shooting Issues Statement About \$6 Million Settlement’. *Cleveland.com*, April 25. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2016/11/tamir\\_rice\\_estates\\_multi-milli.html](http://www.cleveland.com/court-justice/index.ssf/2016/11/tamir_rice_estates_multi-milli.html). Last visited June 8, 2017.
  - Heisig, Eric. 2016E. ‘Tamir Rice Estate’s Multi-Million Dollar Settlement Approved by Probate Court’. *Cleveland.com*, November 30. Retrieved from [http://www.cleveland.com/court-justice/index.ssf/2016/11/tamir\\_rice\\_estates\\_multi-milli.html](http://www.cleveland.com/court-justice/index.ssf/2016/11/tamir_rice_estates_multi-milli.html). Last visited June 8, 2017.
  - Higgs, Robert. 2016. ‘Cuyahoga County Prosecutor Timothy McGinty concedes defeat to Michael O’Mally in Democratic Primary’. *Cleveland.com*, March 16. Retrieved from [http://www.cleveland.com/metro/index.ssf/2016/03/cuyahoga\\_county\\_prosecutor\\_tim\\_6.html](http://www.cleveland.com/metro/index.ssf/2016/03/cuyahoga_county_prosecutor_tim_6.html). Last visited June 8, 2017.
  - Holpuch, Amanda. 2014. ‘White Police Officers Involved in Black Couple’s Death Sue Cleveland for Racial Discrimination’. *The Guardian*, December 1. Retrieved from <https://www.theguardian.com/us-news/2014/dec/01/cleveland-police-unarmed-black-pair-lawsuit>. Last visited June 8, 2017.
  - Juozapavicius, Justin. 2017. ‘Jury Finds Oklahoma Cop Not Guilty in Shooting of Unarmed Black Man’. *Business Insider*, May 17. Retrieved from <http://www.businessinsider.com/tulsa-shooting-not-guilty-2017-5?international=true&r=US&IR=T>. Last visited June 8, 2017.
  - Laughland, Oliver, Kayla Epstein and Jessica Glenza. 2014. ‘Eric Garner Protests Continue in Cities Across America Through Second Night’. *The Guardian*, December 5. Retrieved from <https://www.theguardian.com/us-news/2014/dec/05/eric-garner-case-new-york-protests-continue-through-second-night>. Last visited June 8, 2017.
  - Levine, Sam. 2014. ‘Cleveland Police Union Refuses To Back Down From Criticism Of NFL Player For Tamir Rice Shirt’. *The Huffington Post*, December 15. Retrieved from [http://www.huffingtonpost.com/2014/12/15/jeffrey-follmer-cleveland-browns\\_n\\_6330990.html](http://www.huffingtonpost.com/2014/12/15/jeffrey-follmer-cleveland-browns_n_6330990.html). Last visited June 8, 2017.

- Lieszkovszky, Ida. 2015. 'Tamir Rice Investigation Released: The Big Story'. *Cleveland.com*, June 13. Retrieved from [http://www.cleveland.com/metro/index.ssf/2015/06/tamir\\_rice\\_investigation\\_relea.html](http://www.cleveland.com/metro/index.ssf/2015/06/tamir_rice_investigation_relea.html). Last visited June 8, 2017.
- Litten, Kevin. 2017. 'In Alton Sterling Shooting, Baton Rouge Police Officers Won't Face Federal Charges'. *Nola.com*, May 2. Retrieved from [http://www.nola.com/crime/index.ssf/2017/05/alton\\_sterling\\_shooting\\_baton\\_rouge\\_police.html](http://www.nola.com/crime/index.ssf/2017/05/alton_sterling_shooting_baton_rouge_police.html). Last visited June 8, 2017.
- *Live Satellite News*. 2015. 'Tamir Rice the FULL Videos Released- Fair Use'. December 28. Retrieved from <https://www.youtube.com/watch?v=0B0xVkBsvPw>. Last visited June 8, 2017.
- *Los Angeles Times*. 2014. 'Hear the 911 Call About Tamir Rice: Gun Is 'Probably Fake', Caller Says'. November 26. Retrieved from <http://www.latimes.com/nation/nationnow/la-na-nn-tamir-rice-911-call-20141126-htmstory.html>. Last visited June 8, 2017.
- Lowery, Wesley. 2017. "Black Lives Matter: Birth of a Movement". *The Guardian*, January 17. Retrieved from <https://www.theguardian.com/us-news/2017/jan/17/black-lives-matter-birth-of-a-movement>. Last visited June 8, 2017.
- MacDonald, Evan. 2015. 'Prosecutor Timothy McGinty Denied Party Recommendation From Ward Leaders in Re-election Bid'. *Cleveland.com*, December 5. Retrieved from [http://www.cleveland.com/metro/index.ssf/2015/12/democratic\\_ward\\_leaders\\_recomm.html](http://www.cleveland.com/metro/index.ssf/2015/12/democratic_ward_leaders_recomm.html). Last visited June 8, 2017.
- MacDonald, Evan. 2017. 'Who Is William Cunningham, the Third Officer Facing Discipline in Tamir Rice Incident'. *Cleveland.com*, January 13. Retrieved from [http://www.cleveland.com/metro/index.ssf/2017/01/who\\_is\\_william\\_cunningham\\_the.html](http://www.cleveland.com/metro/index.ssf/2017/01/who_is_william_cunningham_the.html). Last visited June 8, 2017.
- Maddow, Rachel. 2014. 'Disturbing Past Found in Officers Involved in Boy's Shooting'. *MSNBC*, December 4. Retrieved from <http://www.msnbc.com/rachel-maddow/watch/officer-who-shot-boy-has-disturbing-past-367476803970>. Last visited June 8, 2017.
- Mark, Michelle. 2016. 'Cleveland's Police Union Released a Bizarre Statement on the \$6 Million settlement Paid Out for the Police Shooting of a 12-Year-Old Boy'. *Business*

*Insider*, April 25. Retrieved from <http://www.businessinsider.com/cleveland-police-unions-bizarre-statement-on-tamir-rice-settlement-2016-4?international=true&r=US&IR=T>. Last visited June 8, 2017.

- Marsden, William. 2014. 'Black Mothers Have to Protect Their Children in Racist America, Law Professor Says'. *Postmedia Breaking News*, November 27.
- Matthew, Jennie. 2014. 'Ferguson Calm as New US Police Shooting in Spotlight'. *Agence France Presse*, November 27.
- McCarthy, Tom. 2014. 'Cleveland Officer Who Fatally Shot Tamir Rice Judged Unfit for Duty in 2012'. *The Guardian*, December 4'. Retrieved from [https://www.theguardian.com/us-news/2014/dec/03/officer-who-fatally-shot-tamir-rice-had-been-judged-unfit?CMP=share\\_btn\\_tw](https://www.theguardian.com/us-news/2014/dec/03/officer-who-fatally-shot-tamir-rice-had-been-judged-unfit?CMP=share_btn_tw). Last visited June 8, 2017.
- McCormack, Simon. 2015. 'New Video of Tamir Rice Shooting Shows Police Arresting Sister, Delaying First Aid'. *The Huffington Post*, January 8. Retrieved from [http://www.huffingtonpost.com/2015/01/08/new-video-tamir-rice\\_n\\_6436040.html](http://www.huffingtonpost.com/2015/01/08/new-video-tamir-rice_n_6436040.html). Last visited June 8, 2017.
- McCormack, Simon. 2015. 'Judge Finds Probable Cause To Charge Officer Timothy Loehmann With Murder In Tamir Rice Killing'. *Huffington Post*, June 11. Retrieved from [http://www.huffingtonpost.com/2015/06/11/charges-tamir-rice\\_n\\_7564584.html](http://www.huffingtonpost.com/2015/06/11/charges-tamir-rice_n_7564584.html). Last visited June 8, 2017.
- McDonnell-Parry, Amelia and Justine Barron. 2017. 'Death of Freddie Gray: 5 Things You Didn't Know'. *Rolling Stone*, April 12. Retrieved from <http://www.rollingstone.com/culture/features/death-of-freddie-gray-5-things-you-didnt-know-w476107>. Last visited June 8, 2017.
- McGrath, Michael. 2017A. *Disposition Letter Patrol Officer William Cunningham*. March 10. Retrieved from <https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AADCcHhZp4tdL1C48vBsYuRCa/Holli nger%20and%20Cunningham%20Disposition%20Letters.pdf?dl=0>. Last visited June 8, 2017.
- McGrath, Michael. 2017B. *Disposition Letter Patrol Officer Frank Garmback III*. May 30. Retrieved from

- [https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AACr36I84atWx7FIAA4Gp8yLa/Garmb ack%20Frank%20%231582%205-30-17\\_Redacted.pdf?dl=0](https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AACr36I84atWx7FIAA4Gp8yLa/Garmb ack%20Frank%20%231582%205-30-17_Redacted.pdf?dl=0). Last visited June 8, 2017.
- McGrath, Michael. 2017C. *Termination Letter Patrol Officer Timothy Loehmann*. May 30. Retrieved from [https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AAAGjP0Qn0T\\_q3d3XDCJEs6sa/Loehmann%20Timothy%20PO%20%231231%205-30-17\\_Redacted.pdf?dl=0](https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AAAGjP0Qn0T_q3d3XDCJEs6sa/Loehmann%20Timothy%20PO%20%231231%205-30-17_Redacted.pdf?dl=0). Last visited June 8, 2017.
  - Mele, Christopher. 2017. ‘Officers Involved in Tamir Rice Killing Face Administrative Charges’. *The New York Times*, January 13. Retrieved from <https://www.nytimes.com/2017/01/13/us/officers-in-tamir-rice-killing.html>. Last visited June 8, 2017.
  - Mitchell, Mitch. 2016. ‘Fired Arlington Officer Not Indicted for Killing Christian Taylor’. *The Star-Telegram*, June 8. Retrieved from <http://www.star-telegram.com/news/local/community/arlington/article82558822.html>. Last visited June 8, 2017.
  - Morin, Rich and Renee Stepler. 2016. ‘The Racial Confidence Gap in Police Performance’. *Pew Research Center*, September 29. Retrieved from <http://www.pewsocialtrends.org/2016/09/29/the-racial-confidence-gap-in-police-performance/>. Last visited June 8, 2017.
  - Morris, Philip. 2016. ‘Voters Dumped Tim McGinty for the Devil They Don’t Know’. *The Plain Dealer*, March 18. Retrieved from [http://www.cleveland.com/morris/index.ssf/2016/03/voters\\_dumped\\_tim\\_mcginty.html](http://www.cleveland.com/morris/index.ssf/2016/03/voters_dumped_tim_mcginty.html). Last visited June 8, 2017.
  - Munshi, Neil. 2014. ‘Fear Mixes With Anger as Ferguson Braces for More Unrest’. *Financial Times*, November 25.
  - Nathan, Debbie. 2016. ‘What Happened to Sandra Bland?’ *The Nation*, April 21. Retrieved from <https://www.thenation.com/article/what-happened-to-sandra-bland/>. Last visited June 8, 2017.
  - *NBC5Chicago*. 2015. ‘Dash-Cam Video Released Showing Laquan McDonald’s Fatal Shooting’. November 24. Retrieved from <http://www.nbcchicago.com/news/local/Police->

[Release-Disturbing-Video-of-Officer-Fatally-Shooting-Chicago-Teen-352231921.html](http://www.cleveland.com/news/2014/12/03/Release-Disturbing-Video-of-Officer-Fatally-Shooting-Chicago-Teen-352231921.html).

Last visited June 8, 2017.

- Newport, Frank. 2016. 'Public Opinion Context: Americans, Race and Police'. *Gallup*, July 8. Retrieved from <http://www.gallup.com/opinion/polling-matters/193586/public-opinion-context-americans-race-police.aspx>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2014A. 'Full Video: Tamir Rice Shooting Video'. December 3. Retrieved from <https://www.youtube.com/watch?v=dw0EMLM1XRI>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2014B. 'Video: Tamir Rice Police Shooting, Narration by Cleveland Police'. December 3. Retrieved from <https://www.youtube.com/watch?v=PWQpgMfD0Pc>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2014C. 'Full Video: Department of Justice Investigation of Cleveland Police Excessive Force'. December 4. Retrieved from <https://www.youtube.com/watch?v=iKnmyz0QSx8>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2014D. 'Tamir Rice Shooting | Public Forum'. November 25. Retrieved from <https://www.youtube.com/watch?v=tZpJgScyzXM>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2014E. 'Video: Forensic Experts on Video of Tamir Rice Being Shot by Police Officer'. November 26. Retrieved from [https://www.youtube.com/watch?v=UaZyX\\_stt5A](https://www.youtube.com/watch?v=UaZyX_stt5A). Last visited June 8, 2017.
- *News 5 Cleveland*. 2014F. 'Forensic Experts Evaluate Video of 12-Year-Old Tamir Rice Being Shot by Police Officer'. November 26. Retrieved from <https://www.youtube.com/watch?v=Cgv5R7lnJLE>. Last visited June 8, 2017.
- *News 5 Cleveland*. 2015. 'Full Press Conference: Grand Jury Declines to Indict Officer Who Shot 12-Year-Old Tamir Rice in Clev'. December 28. Retrieved from <https://www.youtube.com/watch?v=N7GZFbEm2eo>. Last visited June 8, 2017.
- Neyfakh, Leon. 2016. 'Big Win for Black Lives Matter; The Prosecutors in the Tamir Rice and Laquan McDonald Cases Lose Their Primary Races'. *Slate*, March 16. Retrieved from [http://www.slate.com/articles/news\\_and\\_politics/crime/2016/03/the\\_prosecutors\\_in\\_the\\_t](http://www.slate.com/articles/news_and_politics/crime/2016/03/the_prosecutors_in_the_t)

- [amir rice and laquan mcdonald cases lose their primary.html](#). Last visited June 8, 2017.
- Oppel, Richard A. Jr. 2014A. ‘National Questions Over Police Hit Home in Cleveland’. *New York Times*, December 8. Retrieved from <https://www.nytimes.com/2014/12/09/us/family-of-boy-killed-by-cleveland-officer-to-pursue-criminal-case.html>. Last visited June 8, 2017.
  - Oppel, Richard A. Jr. 2014B. ‘Police Shooting of Tamir Rice Is Ruled a Homicide’. *New York Times*, December 12.
  - Palmer, Kim. 2015. ‘Cleveland Activists Oppose Re-election of Prosecutor in Tamir Rice Shooting’. *Reuters*, December 30. Retrieved from <http://www.reuters.com/article/us-usa-police-cleveland-idUSKBN0UD1PX20151230>. Last visited June 8, 2017.
  - Palmer, Kim. 2016. ‘Cleveland Mayor Apologizes for Tamir Rice Ambulance Claim’. *Reuters*, February 11. Retrieved from <http://www.reuters.com/article/us-ohio-tamirrice-idUSKCN0VK1SO>. Last visited June 8, 2017.
  - Peters, Mark. 2014. ‘Cleveland Police Say Video Exists of Police Shooting of 12-Year-Old Boy; Video Could Give Clear Accounting of Shooting Death’. *The Wall Street Journal Online*, November 24.
  - Posner, Sarah. 2017. ‘Jeff Session’s Plan to Undermine Police Reform – and Civil Rights’. *The Washington Post*, April 4. Retrieved from [https://www.washingtonpost.com/blogs/plum-line/wp/2017/04/04/jeff-sessions-plan-to-undermine-police-reform-and-civil-rights/?utm\\_term=.e0e386cb6c35](https://www.washingtonpost.com/blogs/plum-line/wp/2017/04/04/jeff-sessions-plan-to-undermine-police-reform-and-civil-rights/?utm_term=.e0e386cb6c35). Last visited June 8, 2017.
  - *RT America*. 2015. ‘Year of Protests: Ferguson Erupts Into Rioting After White Officer Kills Unarmed Black Teen’. August 8. Retrieved from <https://www.rt.com/usa/311916-ferguson-timeline-aug-nov/>. Last visited June 8, 2017.
  - Scruggs, Afi. 2016. ‘Tamir Rice Protesters Picket House of Cleveland Prosecutor Timothy McGinty’. *The Guardian*, January 1. Retrieved from <https://www.theguardian.com/us-news/2016/jan/01/tamir-rice-protest-cleveland-prosecutor-timothy-mcginty>. Last visited June 8, 2017.
  - Shaffer, Cory. 2014. ‘Father of Cleveland Cop Who Shot Tamir Rice Says His Son Had No Choice’. *Cleveland.com*, December 1. Retrieved from

- [http://www.cleveland.com/metro/index.ssf/2014/12/father\\_of\\_cleveland\\_cop\\_who\\_sh.ht ml#incart\\_related\\_stories](http://www.cleveland.com/metro/index.ssf/2014/12/father_of_cleveland_cop_who_sh.ht ml#incart_related_stories). Last visited June 8, 2017.
- Shaffer, Cory. 2015A. 'Extended Tamir Rice Shooting Video Shows Officers Restrained Sister'. *Cleveland.com*, January 7. Retrieved from [http://www.cleveland.com/metro/index.ssf/2015/01/extended\\_tamir\\_rice\\_shooting\\_v.html #incart\\_m-rpt-1](http://www.cleveland.com/metro/index.ssf/2015/01/extended_tamir_rice_shooting_v.html #incart_m-rpt-1). Last visited June 8, 2017.
  - Shaffer, Cory. 2015B. 'Tamir Rice Shooting Was Tragic but Reasonable: Prosecution Experts'. *Cleveland.com*, October 10. Retrieved from [http://www.cleveland.com/metro/index.ssf/2015/10/tamir\\_rice\\_shooting\\_was\\_tragic.html](http://www.cleveland.com/metro/index.ssf/2015/10/tamir_rice_shooting_was_tragic.html). Last visited June 8, 2017.
  - Shaffer, Cory. 2015C. 'Cuyahoga County Democratic Party Does Not Endorse in Prosecutor's Race'. *Cleveland.com*, December 17. Retrieved from [http://www.cleveland.com/metro/index.ssf/2015/12/cuyahoga\\_county\\_democratic\\_par\\_1.html](http://www.cleveland.com/metro/index.ssf/2015/12/cuyahoga_county_democratic_par_1.html). Last visited June 8, 2017.
  - Shaffer, Cory. 2017. 'Cuyahoga County Prosecutor Michael O'Malley Takes Office'. *Cleveland.com*, January 3. Retrieved from [http://www.cleveland.com/metro/index.ssf/2017/01/cuyahoga\\_county\\_prosecutor\\_mic\\_1.html](http://www.cleveland.com/metro/index.ssf/2017/01/cuyahoga_county_prosecutor_mic_1.html). Last visited June 8, 2017.
  - Shoichet, Catherine, Elliott C. McLaughlin and Kyung Lah. 2015. 'Justice Dept.: Cleveland Police Has Pattern of Excessive Force'. *CNN*, May 26. Retrieved from <http://edition.cnn.com/2014/12/04/us/cleveland-justice-department-police-excessive-force/>. Last visited June 8, 2017.
  - Skinner, Curtis. 2017. 'No Charges for Los Angeles Officers Who Killed Unarmed Black Man'. *Reuters*, January 24. Retrieved from <http://www.reuters.com/article/us-california-police-idUSKBN1582U2>. Last visited June 8, 2017.
  - Swaine, Jon. 2014. 'Ohio Walmart Video Reveals Moments Before Officer Killed John Crawford'. *The Guardian*, September 25. Retrieved from <https://www.theguardian.com/world/2014/sep/24/surveillance-video-walmart-shooting-john-crawford-police>. Last visited June 8, 2017.
  - Swaine, Jon, Oliver Laughland, and Afi Scruggs. 2016. 'Cleveland Agrees to Pay Tamir Rice Family \$6m Over Police Shooting'. *The Guardian*, April 25. Retrieved from



- <https://www.theguardian.com/us-news/2016/apr/25/cleveland-tamir-rice-family-lawsuit-settlement>. Last visited June 8, 2017.
- Swaine, Jon, Oliver Laughland, Jamiles Lartey and Ciara McCarthy. 2015. 'The Counted: Ties That Bind'. *The Guardian*, December 31. Retrieved from <https://www.theguardian.com/us-news/2015/dec/31/ties-that-bind-conflicts-of-interest-police-killings>. Last visited June 8, 2017.
  - *TV20 Cleveland*. 2014. 'Press Conference – Mayor Frank G. Jackson Comments Regarding the Department of Justice'. December 11. Retrieved from <https://www.youtube.com/watch?v=gIpLCVwqe-g>. Last visited June 8, 2017.
  - *TV20 Cleveland*. 2015. 'Mayor Frank G. Jackson Response to the Tamir Rice Grand Jury Decision'. December 28. Retrieved from <https://www.youtube.com/watch?v=KKttykrYrcs>. Last visited June 8, 2017.
  - *TV20 Cleveland*. 2016. 'Press Conference – Mayor Frank G. Jackson to Address to Tamir Rice Settlement'. April 25. Retrieved from <https://www.youtube.com/watch?v=-atDVh4S4eY&feature=youtu.be>. Last visited June 8, 2017.
  - Volk, Kristin. 2015. 'Despite partial Stay, Judge Rules That Officers Involved in Tamir Rice's Death Must Respond to Suit'. *News 5 Cleveland*, June 1. Retrieved from <http://www.news5cleveland.com/news/local-news/cleveland-metro/despite-partial-stay-judge-rules-that-officers-involved-in-tamir-rices-death-must-respond-to-suit>. Last visit June 8, 2017.
  - United States of America v. City of Cleveland ('USA v. Cleveland'). 2015. *Consent Decree Regarding the Cleveland Division of Police*. United States District Court ; Northern District of Ohio, Eastern Division. Retrieved from <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/567d81b6df40f3468f637fc0/1451065782167/doj-cleveland-police-consent-decree.pdf>. Last visited June 8, 2017.
  - United States Department of Justice: Civil Rights Division, United States Attorney's Office Northern District of Ohio ('DOJ CRD & USDA North Ohio'). 2014. *Investigation of the Cleveland Division of Police*. December 4. Retrieved from <https://www.justice.gov/file/180576/download>. Last visited June 8, 2017.

- Department of Justice: Office of Public Affairs ('DOJ PA'). 2014. *Justice Department and City of Cleveland Agree to Reform Division of Police After Finding a Pattern of Practice of Excessive Force*. December 4. Retrieved from <https://www.justice.gov/opa/pr/justice-department-and-city-cleveland-agree-reform-division-police-after-finding-pattern-or>. Last visited June 8, 2017.
- Williams, Calvin D. 2017. *Disposition Letter Dispatcher Constance Hollinger*. March 10. Retrieved from <https://www.dropbox.com/sh/z5g1kd9qzjggdw4/AADCcHhZp4tdL1C48vBsYuRCa/Hollinger%20and%20Cunningham%20Disposition%20Letters.pdf?dl=0>. Last visited June 8, 2017.
- Williams, Dan. 2017. 'Mayor Jackson and Chief Williams Announce Administrative Charges for Police Officers Loehmann, Garmback, and Cunningham'. *Straight From City Hall*, January 13. Retrieved from <https://clecityhall.com/2017/01/13/mayor-jackson-and-chief-williams-announce-administrative-charges-for-police-officers-loehmann-garmback-and-cunningham/>. Last visited June 8, 2017.
- Williams, Daniel, and Emily Lundgard. 2015. 'City of Cleveland Transfers Tamir Rice Investigation to Cuyahoga County Sheriff's Department'. *Office of the Mayor, Office of the County Executive*. January 2. Retrieved from [http://www.city.cleveland.oh.us/sites/default/files/pressReleases/01\\_02\\_2015\\_Cleveland\\_Transfers\\_Tamir\\_Rice\\_Investigation.pdf](http://www.city.cleveland.oh.us/sites/default/files/pressReleases/01_02_2015_Cleveland_Transfers_Tamir_Rice_Investigation.pdf). Last visited June 8, 2017.
- Williams, Matt. 2013. 'Trayvon Martin Protests Being Held in More Than 100 US Cities'. *The Guardian*, July 20. Retrieved from <https://www.theguardian.com/world/2013/jul/20/trayvon-martin-protests-us-cities>. Last visited June 8, 2017.
- Withnall, Adam. 'Tamir Rice: Cleveland Police Say Video of Them Shooting 12-Year-Old Playing With Fake Gun 'Will Show Officer Acted Reasonably''. *Independent Online*, November 26.

## Appendix A: List of Preselected Cases

2012, November 29: Timothy Russell and Malissa Williams; Cleveland, Ohio (*CBS News*, 2016).

2014, July 17: Eric Garner; New York City, New York (Baker, Goodman and Mueller, 2015).

2014, August 5: John Crawford; Dayton, Ohio (Swaine, 2014).

2014, August 9: Michael Brown; Ferguson, Missouri (Lowery, 2017; *RT America*, 2015).

2014, August 11: Ezell Ford; Los Angeles, California; (Williams, 2013).

2014, October 20: Laquan McDonald; Chicago, Illinois (*NBC5Chicago*, 2015).

2014: November 22: Tamir Rice; Cleveland, Ohio

2015, April 4: Walter Scott; North Charleston, South Carolina (Blinder, 2017).

2015, April 12: Freddy Gray; Baltimore, Maryland (McDonnell-Parry and Barron, 2017).

2015, July 13: Sandra Bland; Waller County Jail, Texas (Nathan, 2016).

2015, August 7: Christian Taylor; Arlington, Texas (Mitchell, 2016).

2016, July 5: Alton Sterling; Baton Rouge, Louisiana (Litten, 2017).

2016, July 6: Philando Castile; St. Paul, Minnesota (Capecchi and Smith, 2016).

2016, September 16: Terence Crutcher; Tulsa, Oklahoma (Juozapavicius, 2017).

2016, September 20: Keith Scott; Charlotte, North Carolina (Fausset and Binder, 2016).