I. The Fallacy of Split Second Decision Making

The idea that police officers often make split-second decisions when using force and is often
cited by city officials and courts to justify otherwise unreasonable mistakes made by officers when
using force. Michael Avery, *Unreasonable Seizures of Unreasonable People: Defining The Totality of
Circumstances Relevant to Assessing the Police Use of Force Against Emotionally Disturbed People*, 34 Colum.
Hum. Rts. L. Rev. 261, 266 (Spring 2003). The logic, enshrined into Constitutional law by the
Supreme Court in *Graham v. Connor* (1989), has served to conferred broad an unjustified immunity
from accountability for poor decisions. But research on police decision making shows that the vast
majority of those “split second” decisions could be avoided, if only officers were required to follow
principles of force mitigation and de-escalation. *Id.* Indeed, most “split second” decisions are
manufactured by a series of officer actions, before the officer uses force.¹

Law enforcement agencies recognize that sound assessments and tactics on the front end
prevent the need for split second decisions on the back end. A body of experience and research
show that most split second decisions on use of force result from questionable decisions by officers,
including those in which officers create or escalate a tense situation that could have been avoided by
a sound assessment and tactics, such as using time, distance, and positioning. Samuel Sinyangwe,
*Examining the Role of Use of Force Policies in Ending Police Violence*, Police Use of Force Project, 1
(September 20, 2016) (use of force complaints have decreased in police departments that implement
policies on pre-confrontation and de-escalation; shootings by police officers decreased the most in
departments that require exhausting other means before resorting to greater uses of force). Under

¹ *See, e.g.*, Jamie Kalven and Eyal Weizman, *How Chicago Police Created a False Narrative after Officers Killed
Hari Augustus*, The Intercept (Sep. 19 2019).
Superintendent David Brown’s leadership, the number of yearly excessive force complaints in Dallas decreased from 147 to 22, after he implemented mandatory training on de-escalation throughout the Department. *Response to Resistance*, Dallas Police Department (Nov. 3, 2018).² Police practices expert, James J. Fyfe, who has testified in numerous trials involving police shootings of mentally ill subjects, believes that the officer’s first response to an emotionally disturbed person is critical and that “[i]n all of the cases where I testified, the cops screwed up in the first 90 seconds.” Kathy Bunch, *When Cops Confront Mental Illness*, WebMD Med. News (Apr. 23, 2001).

II. Including a “Split-Second Decision Making” Caveat in CPD’s Use of Force Policy Undermines Force Mitigation and De-escalation Principles

Rather than training officers on ways to avoid escalating situations that require split-second decision making, the policy in its current form trains officers to expect split-second decision making, and equips it as a tool for hindsight justification of their use of force. The emphasis on split-second decision making over the use of de-escalation tactics has led to numerous fatal police shootings that could have easily been avoided in Chicago and beyond. For example, Harith Augustus, a barber in the South Shore neighborhood was shot five times by a Chicago police officer, only after the officer and his partners unnecessarily escalated a routine encounter as Mr. Augustus was walking home from work. Officer Jason Van Dyke murdered 17-year-old Laquan McDonald, after he and his partner drove up on him and jumped out of their car with guns drawn at close range, rather than making any effort to de-escalate the situation. Similarly, Cleveland Officer Timothy Loehmann shot and killed 12-year-old Tamir Rice, who had been playing with a toy gun, after driving up on Tamir and without making any attempt to approach at a safe distance to assess the situation. The emphasis placed on split-second decision making has proved especially deadly for Black men confronted by police.

² The Dallas Report can be found here: [http://www.dallaspolice.net/reports/Pages/responseresistance.aspx](http://www.dallaspolice.net/reports/Pages/responseresistance.aspx)
Principles of force mitigation are intended to train officers to de-escalate situations. Indeed, the Consent Decree requires the CPD to develop policies and training on de-escalation. Consent Decree, Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019), ECF No. 703. While the CPD makes reference to force mitigation principles, it fails to adopt them as overarching policy. This needs to be corrected. The Chicago Police Department must make clear that force must only be used as a measure of last resort, and even then, it must be limited to the least amount of force necessary under the circumstances. Including a “split-second decision making” caveat in CPD’s Use of Force policy undermines these guiding principles that should be at the heart of the policy and fails to train officers on the ways in which their actions can create the need to use force where the need would otherwise not exist.