



The Denver Report on Use of Deadly Force

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THE POLICE ASSESSMENT RESOURCE CENTER (PARC)

The Police Assessment Resource Center (PARC) is a national nonprofit founded in 2001 with funding from the Ford Foundation. PARC is dedicated to the advancement of effective, respectful, accountable, and constitutional policing. PARC provides nonpartisan, independent, and evidence-based counsel, advice, and research to law enforcement agencies, cities and counties, mayors, city councilpersons, and community groups. Based in Los Angeles, PARC serves as a provider of information accessible to all who may be interested in police oversight and reform throughout the United States. PARC publishes the Police Practices Review, a quarterly newsletter that is widely read across the nation by police executives and those involved in police oversight and accountability. PARC's website, www.parc.info, received more than 65,000 hits per month. Merrick Bobb serves as PARC's President and Executive Director.

ACKNOWLEDGMENTS

PARC thanks the City and County of Denver for funding this project and the excellent contribution of the Denver Police Department, Denver's Citizen Oversight Board, and the many individuals, community groups, and advocacy organizations that took the time to meet with us and share their perspectives. PARC thanks and acknowledges the outstanding contributions of present and former PARC staff, including Oren Root, Matthew Barge, Camelia Naguib, and Norma Zamudio, and of our principal police consultant, Chief Bernard K. Melekian of the Pasadena (California) Police Department. PARC further thanks and acknowledges the wise counsel of Denver attorneys Howard Holme and Buddy Noel.

The Denver Team

The Denver Team is comprised of present and former PARC staff and consultants who were engaged for detailed review and analysis of all officer-involved shootings involved in this Report. Some of these consultants currently have or recently had senior executive positions with leading law enforcement agencies. They each participated on the Denver Team solely as individuals and not as representatives of their department or former department. Moreover, the views, opinions, and conclusions in this Report only represent those of PARC and its present and former staff authoring this Report.

Merrick J. Bobb

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Merrick Bobb is the President and founding executive director of PARC. A lawyer, he was the first person to occupy the role of police monitor and has become a nationally recognized expert on police best practice and oversight. Merrick has monitored the Los Angeles County Sheriff's Department for seven years and has consulted with jurisdictions around the country and with the U.S. Department of Justice. As Special Counsel, it has been his responsibility to review in detail and report upon the integrity and thoroughness of investigations of officer-involved shootings and in-custody deaths.

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Chief Bernard Melekian joined PARC as a senior advisor in June 2004. He is the Police Chief of Pasadena, California, and has occupied that position since 1996. In 1973 he joined the Santa Monica Police Department where he was promoted through the ranks to Captain. He was among the first canine handlers in Southern California and has been involved in tactical teams at all levels throughout his career. Chief Melekian is the national secretary for the Police Executive Research Forum, serves on the state executive committee for the California Police Chiefs' Association and is a two-term past president of the Los Angeles County Police Chiefs' Association. He chaired the state Attorney General's Blue Ribbon Commission on SWAT policy and was a law enforcement representative to the Council of State Governments' Criminal Justice/Mental Health Consensus Project. Chief Melekian earned a master's degree in Public Administration at California State University, Northridge, and is a doctoral student at the USC School of Policy, Planning, and Development.

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Oren Root is currently the Director of the Vera Institute of Justice Center on Immigration and Justice. From 2001-07, he served as Deputy Director of PARC. Prior to assisting Vera to establish PARC, Oren Root served as interim director of the Bureau of Justice Assistance, Vera's project in South Africa. From 1992 to 2000, he directed an alternative to detention program for people facing deportation and a rehabilitative alternative to incarceration program for young felony offenders. Prior to that, he was a criminal defense lawyer in New York for 18 years.

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Matthew Barge joined PARC in 2006 as a Research Analyst. Prior to PARC, Matthew worked at a nonpartisan political journalism website, Factcheck.org, and at the Los Angeles office of Big Brothers Big Sisters, a national non-profit serving at-risk youth. He holds a B.A. in government from Georgetown University.

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Camelia Naguib joined PARC as a Research Associate in 2006. She holds a B.A. in Politics from Oberlin College and a Master of Public Policy from the UCLA School of Public Affairs, where she concentrated in the area of Crime and Drug Control Policy. While at UCLA, she worked to improve the release process at the Los Angeles County Jail. Prior to graduate school, Camelia served as Assistant Program Director at Milestones, a residential multi-service center for state and county parolees. She has also worked as an evaluator for the UCLA School Management Program.

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Michael E. Graham, a member of PARC's Board, was employed by the Los Angeles Sheriff's Department for 32 years, rising through the ranks from Deputy to Assistant Sheriff and Acting Undersheriff. As the second ranking member of the largest Sheriff's department in the United States, Mike Graham was responsible for more than 13,000 employees, including more than 8,000 sworn members of the department. As a senior LASD executive, he reviewed and passed upon all officer-involved shootings, in-custody deaths, and serious uses of force.

From 1993 until 1995, he was Chief of the Professional Standards and Training Division where he oversaw Internal Affairs, the Internal Criminal Investigation Bureau, which investigated possible criminal misconduct by LASD personnel, the LASD Training Academy, and the LASD's internal audit and quality control functions. In 1994, as Chief of Professional Standards and Training, he created the LASD's Risk Management Bureau. Since his retirement from the LASD in 1998, Mike Graham has served as a consultant and advisor to PARC and the United States Department of Justice. He has personally reviewed hundreds of investigative files of police shootings and in-custody deaths.

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Thomas E. Holliday is a partner in the Litigation Department in Gibson, Dunn & Crutcher's Los Angeles office. He is also co-Chair of the firm's White Collar Defense and Investigations Practice Group. From 1995 to 1999, he was the co-Partner-in-Charge of the Los Angeles office of Gibson, Dunn & Crutcher. He received his undergraduate degree from Stanford University, where he was elected Phi Beta Kappa, and his law degree from the University of Southern California, where he served as an Executive Editor of the Law Review and was elected to the Order of the Coif.

Mr. Holliday focuses on white collar criminal defense work and commercial fraud litigation. He has defended individuals and corporate entities in a wide range of business fraud prosecutions.

Mr. Holliday is a Fellow of the American College of Trial Lawyers and served as Deputy General Counsel for the Independent Commission on the Los Angeles Police Department (the "Christopher Commission"). He also served on the LAPD Police Commission Rampart Review Panel.

Mr. Holliday is past President of the Southwest Museum and the Federal Association. He currently serves on the Board of Directors of the Los Angeles Police Memorial Foundation, the Board of Directors of the Police Assessment Resource Center, and the Board of Trustees of Clarkson University.

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Richard Jerome currently works for the Pew Center on the States. He previously served as Deputy Associate Attorney General in the United States Department of Justice from 1997-2001, during which time he oversaw the work of the Civil Rights Division and the Community Relations Service. This work included review of the Justice Department's police misconduct "pattern or practice" program, as well as criminal civil rights prosecutions for excessive force and other

constitutional deprivations. Mr. Jerome compiled DOJ's "Principles for Promoting Police Integrity" and the examples of promising police practices set forth therein. As Counsel to the Assistant Attorney General for Civil Rights, he coordinated the efforts of the National Church Arson Task Force in 1996.

Richard Jerome served as Deputy Monitor of Cincinnati's agreements with DOJ. Along with PARC, he has also been engaged by the Albuquerque City Council to conduct an independent evaluation of the effectiveness of the City's mechanisms for police oversight and accountability. These include the police department's Internal Affairs Division, a citizen oversight commission, and an independent auditor. Richard Jerome also worked with PARC on its project evaluating civilian oversight in Farmington New Mexico.

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Chris Moore is Deputy Chief of the San Jose Police Department. He previously served as Commander of the Internal Affairs Unit in the San Jose Police Department (SJPD) in Northern California. San Jose is the nation's tenth largest city, and the SJPD has a workforce of over 1,800 employees. Chris Moore was responsible for the overall management of SJPD misconduct investigations as well as for the disciplinary process for all of the SJPD's employees. He also sat on the Shooting Review (and in-custody death) Panel to address training and policy issues within the SJPD. He serves as an adjunct instructor for the Internal Affairs Investigations course at San Jose State University.

Chris Moore has worked as a sworn police officer for more than 25 years. His law enforcement career has featured numerous assignments including Patrol, Patrol Administration, Street Crimes, Burglary, Crime Prevention, Field Training and a tour as department spokesperson in the Office of the Chief of Police. Moore is a recipient of the SJPD Hazardous Duty Award and holds a California P.O.S.T. Management Certificate.

Chris Moore is an attorney licensed to practice in California. In 1999, he was selected as a White House Fellow and served in the office of U.S. Attorney General Janet Reno. In 2004, Chris Moore was selected as a Fulbright Police Research Fellow at the London School of Economics. His work there included a study of early intervention systems at New Scotland Yard.

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Julio Thompson is currently the special Assistant Attorney General for the State of Vermont. He is a cum laude graduate of the University of Michigan Law School where he served on the Michigan Law Review. He clerked for United States Court of Appeals Judge Cynthia Hall of the Ninth Circuit. His private practice of law has focused on law enforcement as well as employment law counseling and litigation. Julio Thompson has developed substantial expertise in the area of police use of force.

Working with PARC personnel as a senior member of Special Counsel's staff, and as a consultant to the United States Department of Justice, since 1992 he has analyzed more than 500 officer-involved shootings and serious uses of force. Julio Thompson and Merrick Bobb were retained by the Mayor of Detroit and the Detroit Police Department to conduct a confidential study of police shootings, excessive force, and other risk management issues in that Department. Julio Thompson has additionally reviewed police shooting investigations in connection with the Department of Justice's "pattern or practice" investigations. Julio Thompson has given tutorials on analysis of officer-involved shootings for the Civil Rights Division of the Justice Department, PARC, the Inspector General of the LAPD and his staff, and the Attorney in Charge of the Office of Independent Review for the LASD and his staff.

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Sue Quinn served as Past President and Finance Chair of the National Association for Civilian Oversight of Law Enforcement (NACOLE) from 2003-2005. From 2001-2003, she served as NACOLE's President. Sue Quinn has served as a member of the California Attorney General's Blue Ribbon Commission on SWAT and the City of San Diego Police Use of Force Task Force. She also served as the acting executive officer and as a special investigator for the Citizens' Law Enforcement Review Board of San Diego County.

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Larry Lewis is a retired Police Chief with over 34 years of law enforcement experience in five municipal agencies, serving the last eight years as Chief of Police in the cities of Covina and Alhambra, California, until he retired in 2004. Chief Lewis has instructed and lectured in the areas of use of force, supervision, sexual harassment prevention, police ethics and executive leadership. He possesses significant experience in public agency internal affairs and administrative investigations and organizational assessment. He has conducted and adjudicated use of force investigations. Chief Lewis is past-president of the Los Angeles County Police Chiefs' Association. He is a graduate of the POST Command College.

Phillip Sanchez

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Chief Sanchez is a 26-year veteran of the Santa Monica Police Department, where he currently serves as the Deputy Chief of Police. In 1991, he developed the Department's Special Entry Team (SWAT). Chief Sanchez is a published author. The topics addressed include: The Physiological Effects of Stress in Lethal Environments, Critical Incident Memory Loss, Stress and Civil Liability, and Investigating Officer Involved Shootings. Chief Sanchez is a Court Recognized Expert in the area of police tactics, procedures, and narcotics/undercover operations. He assisted the Orange County Sheriff's academy, where he is an instructor, in developing a high stress officer involved shooting training scenario which is now part of the regular curriculum at the basic academy.



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When I was appointed as the Independent Monitor for the City & County of Denver, one of my first projects was to hire the Los Angeles-based Police Assessment Resource Center (PARC) to review Denver Police Department policies and procedures as they relate to the use of deadly and seriously injurious force. I also asked PARC to conduct an historical review of the Police Department's investigation and administrative review of officer-involved shooting incidents. PARC conducted a similar review for the City of Portland, Oregon in 2003, when I was that city's Police Auditor. The Portland PARC report revealed systemic problems in the Portland Police Bureau's investigation and administrative review of officer-involved shootings and identified significant issues and concerns regarding the Police Bureau's deadly force policies.

I am pleased to note that no similar systemic problems were found during the course of the current evaluation. Instead, PARC has noted that "the Denver Police Department today meets and even exceeds national standards in many areas, making the DPD one of a handful of American police departments becoming a national leader." That being said, PARC has made a number of recommendations that could be expected to improve police policies in a number of areas relating to policy and training. Chief Whitman has promised a formal response to this report in the upcoming months and I will be following up with the Department in the coming year to determine which recommendations will be accepted and implemented and which recommendations, if any, are not acceptable to the Department. For any recommendations that are not accepted, I will be seeking explanations and will publicly report, overall, on the extent to which this report has impacted or improved the work of the DPD.

In addition to PARC's work in evaluating whether current DPD force policies can be considered to comport with national "best practices," I also asked PARC to conduct an historical review of the quality of officer involved shootings investigations and administrative reviews. I believe this part of the review was important to establish a base-line for our expectations and to identify any historical issues or concerns in this area. Identifying and being aware of any past problematic patterns assists me, as the Independent Monitor, in my work monitoring and evaluating investigations and administrative reviews on an ongoing basis.

Although PARC identified a number of issues and concerns in this area (relating to investigations and administrative reviews that were conducted on officer-involved shootings that took place between 1999 and 2003), I am pleased to report that most of these problems had been addressed by the DPD by the time active monitoring of officer-involved shootings began. My observations, over the last two years, leads me to conclude that the Department is now meeting, and even exceeding, national standards in that regard as well. Many of these recent improvements are identified in this report.



I also need to point out that the type of review that is documented in this report has been conducted by other cities only after they have fallen within the scrutiny of the United States Department of Justice or as the result of civil litigation. The City of Denver, in contrast, sought out expert consultants to proactively assess our policies and practices. This review represents accountability to our community that few other cities have been willing to undergo. The Denver Police Department deserves credit for its cooperation and assistance in making this report a reality.

Sincerely,

A handwritten signature in black ink that reads "Richard Rosenthal". The signature is written in a cursive style and is positioned above the printed name.

Richard Rosenthal
Independent Monitor

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INTRODUCTION

At the instance of Denver's Independent Monitor, the Police Assessment Resource Center (PARC) was engaged to conduct an unprecedented study of the Denver Police Department (DPD). Through the prism of 25 officer-involved shootings, PARC has analyzed whether the DPD's policies, training, and practices comport with the best learning nationally on evaluation and management of deadly force and the avoidance of unnecessary or ill advised shootings. We also reviewed DPD policy in areas where misuse of force can turn deadly, including the use of Tasers and impact weapons. Consistent with our contract with the City, PARC did not re-investigate these 25 cases or form conclusions whether individual shootings were justified or particular officers' conduct was proper or improper. Rather, our review was calculated to make observations and draw lessons that will assist the DPD to devise better tactical and strategic training options for its officers, improve the quality of supervision and management, avoid unnecessary shootings, and better investigate and review deadly force incidents.

We conclude that the DPD today meets and even exceeds national standards in many areas, making the DPD one of a handful of American police departments becoming a national leader. Yet it was not always so; and up to as little as three or four years ago, as this Report will demonstrate, there was much to improve in the quality and thoroughness of internal investigations of deadly force incidents. Since that time, we identify four circumstances that together enabled substantial reform and progress to take hold in the DPD since 2004:

- The commitment of the Mayor to spur reform in the DPD by appointing an active Manager of Safety and creating the Citizen Oversight Board (COB) and the Office of the Independent Monitor.
- The Manager of Safety's focused attention on the quality of internal administrative investigations and the DPD's disciplinary process.
- The success of the Independent Monitor in bringing about a greater number of thorough, trustworthy, and transparent internal investigations and improving the

process for the receipt and classification of citizen's complaints. It is highly beneficial that the Independent Monitor personally goes to the scene of shootings and observes Homicide interviews of involved officers and submits questions.

- The thoroughness and thoughtfulness of the District Attorney's reviews of officer-involved shootings for possible prosecution. These analyses are unmatched in their excellence by any other DA's office of which we are aware. Particularly praiseworthy is that the analyses address strategic and tactical issues as well as criminal legal ones.

During the course of our investigation, we observed that the Chief of Police, the Mayor, the Manager of Safety, the District Attorney's Office, the COB, and the Independent Monitor appear to have common goals and expectations and work together well. We commend Chief Whitman for his goals and aspirations for the DPD and his willingness to work together with others, inside and outside the police department, to bring them to fruition and improve the DPD. Nevertheless, there remains work to be done, as the balance of this Report will demonstrate.

Scope of the Investigation.

We considered the thoroughness and integrity of internal DPD investigations of shooting incidents, studying in great detail 25 shootings that took place in the years 1999-2003.¹ We had reasonable access to the DPD's files and personnel and enjoyed the cooperation of the DPD, the Independent Monitor, the District Attorney's Office, the City Attorney's Office, the Denver Police Protective Association (the union), and the COB, among others. We met on several occasions with community groups, including the Ministerial Alliance and others from the African-American community, and representatives of the

¹ Our contract provided for PARC to review 25 cases. The Independent Monitor provided us with a list of all the OIS cases that occurred from 1999 through 2003. At the same time, the Independent Monitor submitted that list to the City Attorney's office, which excluded some cases which had not been closed and had proceedings pending. Approximately 40 cases remained. PARC then did a stratified sample. We chose to examine all the 2003 cases on that list and a subset of the 1999-2002 cases for a total of 19 cases. We then wrote to Chief Whitman, the union, and the COB, providing them with a list of the 19 cases we had chosen and giving each an opportunity to choose two additional cases from the remaining unselected cases. The DPD declined to choose any cases. We then offered the union and the COB an opportunity to choose three cases each. They each did so and thus our universe of 25 cases was constituted.

Latino and Chicano, Native American, organizations representing persons with disabilities, and the gay, lesbian, bisexual, and transgender communities. We met with representatives of the plaintiff's civil rights bar and lawyers for the police union. We met with the Brotherhood, a group comprised of Denver police officers. We met with representatives of the District Attorney and City Attorney's offices. We spoke with community leaders in Denver. We also met with advocacy groups.

Summary of Recommendations .

Chapter 1 considers DPD policies related to the use of deadly and seriously injurious force and the teaching and training materials used to explain these policies. In particular, we considered whether the current Manual and training materials offer appropriate support and guidance to street officers in making decisions about use of deadly and highly injurious force.

Denver's use of force policy underwent several revisions in recent years, principally to address concerns raised by the Paul Childs case and to add a requirement that DPD officers report all defined uses of force to their superiors. Taken as a whole, Denver's use of force policies comport with, or, in many cases, exceed prevailing national standards. Perhaps as a result of the Childs case and others, Denver's policies reflect an unusual and laudable sensitivity about use of force against those with mental or developmental disabilities and individuals in a state of crisis. The DPD forthrightly deals with topical and controversial issues.

At the same time, Denver's policies do not always reflect the thinking and advances in policy development in other law enforcement agencies over the last few years. Where appropriate, Chapter 1 points out where the DPD might consider refining some of its policies. It also appears that the use of force policies have grown by accretion and thus have become long-winded and repetitive and occasionally inconsistent. This may be a good time for the DPD to consolidate and edit down the text.

Our key recommendations in Chapter 1 include:

- Revising and condensing the use of force policy, including modification of the definitions of deadly force, reasonableness, the fleeing felon rule, and revisions of other technical points.
- Modifying current DPD policy and training in the areas of foot pursuits, Tasers, canines, shooting at or from moving vehicles, drawing and displaying firearms, and the use of impact weapons. We recommend discontinuance of the use of saps, among other things.

Chapter 2 deals with the quality of internal investigations by Homicide and by Internal Affairs. We found that the current DPD policies and procedures for investigating the criminal homicide issues relating to officer-involved shootings are consistent with and, in some respects, exceeded national standards. The pre-2004 investigations themselves did not.

In the 25 cases we reviewed, the criminal investigators were erratic, and in some instances did not competently establish the facts required for a thorough and complete criminal homicide investigation. In other instances, the investigative work was superb. But in too many cases, it was sloppy and half-hearted, both in the gathering of physical evidence and in interviews of witnesses. We further noted that, on average, the investigations where the suspect was not wounded or killed—which meant that the District Attorney’s office was not involved—were markedly less thorough and probing, thereby reducing the likelihood of a fair and accurate understanding of what had occurred. We believe that structural changes that have occurred since 2004—most particularly, the establishment of and the role played by the Office of the Independent Monitor—have greatly ameliorated these quality deficiencies, but without examining current files, which the city did not want us to do for legal reasons, we are unable to provide a definitive judgment on this point.

Also in the applicable time period, the DPD policies and procedures did not appropriately provide for the essential additional inquiries concerning administrative and tactical issues that occur in officer-involved shootings; nor in practice did the Department generally examine those issues. Since 2005, the DPD has taken commendable steps to ensure that officer-involved shooting investigations include the examination of such essential administrative and tactical issues, but we have suggestions and recommendations to further improve them.

Our recommendations in Chapter 2 are calculated to improve the quality and timeliness of Homicide and Internal Affairs investigations. They include recommendations for improvement in forensics; the policies and procedures for witness interviews, particularly those of involved officers; and with respect to earlier commencement of Internal Affairs investigations during the pendency of the District Attorney's review.

Chapter 3 considers current DPD policies and practices for the internal review of officer-involved shootings and other seriously injurious force. Police agencies should review officer-involved shootings with two primary goals in mind. First, they must hold their officers accountable: After mastering all of the pertinent facts, they must carefully assess whether the involved officers and their supervisors and commanders have violated any agency policy or procedure or have acted in a manner inconsistent with their training. Second, they must use the incident as a learning tool: Those charged with reviewing the case must determine what lessons can be learned from the Department's experience with critical incidents and should use those lessons to inform and improve the Department's policies, procedures, training, and management. As a basic requirement for effective and accountable policing, a transparent, responsible, and fair review process engenders trust and cooperation from the community served by the agency, thereby enhancing officers' safety and raising the clearance rate for crimes, and leads to less frequent and more judicious uses of deadly force.

The DPD review process in effect from 1999 to 2003 (and until the process was significantly revamped in 2004 and 2005) was pro forma and not calculated to achieve

either of the goals of meaningful internal review. Officer-involved shooting incidents were not carefully scrutinized by the now-defunct Firearms Discharge Review Board (FDRB), known as the “Shoot Board,” and, except in rare instances, resulted in “in-policy” findings after cursory proceedings. In virtually all of the 24² cases we reviewed and in general over many years, we were told by DPD personnel, the FDRB process did not hold officers accountable, nor did it provide lessons to the DPD from either the tactical successes or failures exhibited in scores of officer-involved shootings. As we will discuss in this Report, the present internal review process is a substantial improvement over the process employed during 1999 to 2003. We make some suggestions to make this excellent process even better.

Chapter 4 considers lessons learned from the cases we reviewed. In each of the cases, we found one or more opportunities for tactical improvement. On the other hand, some of the officers and supervisors involved in these incidents showed commendable restraint, both in using their firearms, and in directing officers under their supervision to hold their fire. We made a series of recommendations concerning the DPD's handling of critical incidents, including suggestions for better planning, communication, and supervision by sergeants and lieutenants. We also made recommendations concerning foot pursuits, shooting at motor vehicles, high risk traffic stops, endangerment of bystanders, and interacting with persons who are in crisis, possibly mentally ill, suffering from mental illness, or who have a developmental disability.

The Denver Police Department tends not to reduce a number of practices and procedures mandated in training to specific policies set forth in the Manual. We recommend that it do so, but we are also cognizant that some unprecedented and unusual interpretations of workers compensation law in Denver might, unless retracted or substantially revised, preclude an officer injured in the line of duty from being compensated if the officer's conduct were held out of policy. This is a manifestly unfair result. Nonetheless, the odd

² One of the 25 cases we reviewed involved a shooting in the City of Denver by officers from other police departments. The DPD investigated the case since the shooting occurred in its jurisdiction. But since no DPD officers fired any shots, the case was not subject to FDRB review. Thus, when we refer to the cases we reviewed in this and the following chapter, the operative number is 24, rather than 25.

interpretation of the law is the principal basis for the apparent reluctance of the Department to reduce best practices to policy. Yet if it is not in policy, an officer may not be disciplined for failing to follow it as we view the current state of the law. We recommend the city reconsider the unusual construction of the workers compensation law. Once this impediment is eliminated, we recommend that best practices be reduced to writing and included in the Manual.

As noted before, PARC's perspective on the Department derives in substantial part from our review of policies, training, and performance as reflected in the 25 shooting cases. Our examination of the Department in the years after 2004 has been informed in large part by review of policy changes and training curricula and frequent interviews of persons inside the Department and out. The cases we examined were closed cases; accordingly, cases still in litigation—including the Mena and Lobato incidents—were beyond our purview. Ironically, then, our investigation tended to look at a time when the Department was barely beginning to undergo the reform and change of recent years. The value is open to question of a narrow review of shootings from the DPD's more troubled years in the past if the present is ignored. This report therefore necessarily must deal with both past and present reality.

Because of community mistrust and lack of accountability and transparency, several American police departments, both large and small, have lost the unilateral and exclusive power to investigate and discipline themselves. Hence, to avoid losing these powers, there is every incentive for law enforcement to consistently produce fair and thorough investigations that are transparent and open to external examination and validation to the extent permitted by law. Public confidence that law enforcement is properly taking responsible action against its own malefactors is hard to gain and easy to lose. Nonetheless, it is a task each law enforcement agency must undertake to preserve its privilege of investigating and disciplining its own.

We retain substantial faith that the Denver Police Department has the capacity to police itself in a manner that justifies public trust and confidence under Chief Whitman and the

Manager of Safety and the guidance from the Independent Monitor and the COB. In general, we believe that organizations which objectively and thoroughly police themselves, yet are accountable to the public and civilian authority, as is the DPD, are strong. With responsibility comes accountability. Law enforcement agencies that rigorously police themselves for corruption, dishonesty, and excessive force have great integrity. They are seen by all as protecting and serving all.

Our recommendations for Denver accordingly rest upon certain fundamental principles:

1. Those who enforce the law cannot be above the law.
2. The ability of the police to investigate misconduct by their own is a privilege and not a right. It comes with an obligation to demonstrate—and, to the extent allowed by law, to permit credible, knowledgeable, unbiased, and objective persons outside the department to validate—the fairness, thoroughness, impartiality, and investigatory competence of internal investigations, when necessary.
3. The scope of Internal Affairs investigations, particularly those of officer-involved shootings and seriously injurious force, is no longer limited to whether an officer acted criminally or violated administrative policy. It should include an analysis of the wisdom of policy and examine practice, training, and risk management questions. Internal Affairs investigations do not begin and end with the disciplinary decision. Rather, they are importantly a search for ways to achieve an arrest, or other legitimate law enforcement end, without compromising officer safety but in a manner that lessens risks of unnecessary or avoidable death or serious bodily injury to the officer, the suspect, and any other person.

In summary, we found much to criticize about internal investigations of shootings in the DPD prior to 2004 yet much to praise in the progress of the Department since 2004. The DPD has nearly all the tools in place to generate thorough, fair, and credible investigations of deadly force incidents. The DPD's leadership and management are first rate. Our suggestions and recommendations are not calculated to bring Denver in line

with prevailing national law enforcement standards—in the main, it is already there. Rather, our recommendations are pitched to assist the DPD's quest for a place as one of the best major city police departments in the country. In that regard, there is still work to be done, but it is close at hand.

CHAPTER 1

THE DENVER POLICE DEPARTMENT'S USE OF FORCE POLICIES AND TRAINING.

INTRODUCTION

This chapter considers DPD policies related to the use of deadly and seriously injurious force and the teaching and training materials used to explain these policies. PARC compared the DPD's Operations Manual §105.00 et seq. ("Manual") and related training materials to prevailing industry standards and best practices.³ In particular, we considered whether the current Manual and training materials offer appropriate support and guidance to street officers in making decisions about use of deadly and highly injurious force. In general, as explained more fully below, we conclude that Denver's use of force policies and training materials meet or exceed prevailing industry standards. We commend the Department for the general excellence of its use of force policies and training materials. We nonetheless recommend some additions and changes derived from the practices on these topics of other leading law enforcement agencies.

In connection with our inquiry, the DPD provided its current use of force policy, policy revisions from the last seven years, Departmental Training Bulletins from at least the past ten years, and lesson plans from the recruit academy. We also received current lesson plans from the recruit academy and two force-related past lesson plans. We reviewed the Arrest Control Techniques Manual and thirty-seven departmental training videos, referred to as the "Short 7" series. We also considered in-service training bulletins.

Denver's use of force policy underwent several revisions in recent years, principally to address concerns raised by the controversial shooting of a developmentally disabled teenager named Paul Childs and to add a requirement that DPD officers report all defined uses of force to their superiors. Taken as a whole, Denver's use of force policies comport with, or, in many cases, exceed prevailing national standards. Perhaps as a result of the

³ Citations are to DPD use of force policies §105.00 et seq. as of March 2006, the last version of which we are aware.

Childs case and others, Denver's policies reflect an unusual and laudable sensitivity about use of force against those with mental illness or developmental disabilities and individuals in crisis. The DPD forthrightly deals with topical and controversial issues. The Manual, if revised in light of our recommendations and if properly translated into training and practice on the street, adequately supports effective, respectful, accountable, and constitutional policing. For that, we commend the Chief and the Denver Police Department.

At the same time, Denver's policies do not always reflect the thinking and advances in policy development in other law enforcement agencies over the last few years. Where appropriate, this Report will point out where the DPD might consider refining some of its policies. It also appears that the use of force policies have grown by accretion and thus have become long-winded and repetitive and occasionally inconsistent. This may be a good time for the DPD to consolidate and edit down the text.

I. The values embedded in the use of force policy.

The introduction to the Denver use of force policy currently states as follows:

POLICY:

(a) The Denver Police Department recognizes the value of all human life and is committed to respecting human rights and the dignity of every individual. The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. When deciding whether to use a firearm, officers shall act within the boundaries of law, ethics, good judgment, this use of force policy, and all accepted Denver Police Department policies, practices and training. With these values in mind, an officer shall use only that degree of force necessary and reasonable under the circumstances. An officer may use deadly force in the circumstances permitted by this policy when all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly force is necessary. However, the Police Department recognizes that the objective reasonableness of an officer's decision to use deadly force must allow for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.⁴

⁴ Section 105.00 at page 105-1.

The first sentence of the introduction is very good. It encapsulates the overriding and dominant principles governing any encounter between the police and the public where deadly force is employed. Because the use of force policy that follows is not restricted to deadly force, **we suggest some broadening of the text in the use of force policy to include the Constitutional right of each individual to be free from all forms of excessive force. This might be accomplished simply by adding the following language to the end of the first sentence:**

The Denver Police Department recognizes the value of all human life and is committed to respecting human rights, the dignity of every individual, and the Constitutional right to be free from excessive force, whether deadly or not. An officer shall use only that degree of force necessary and reasonable under the circumstances.

The balance of the introductory text sets forth the principal considerations relating to the use of deadly and less than deadly force. Because the discussion is intertwined, a bright line is not drawn to distinguish deadly and seriously injurious force from lesser kinds of force. Moreover, deadly force as used in the introduction seems limited to firearms, in contrast to a different, broader concept of deadly force set forth later in the definitional part of the use of force policy. **We recommend the DPD eliminate possible confusion by adopting the following language or its equivalent in the definitional portion of the introductory language:**

Deadly and seriously injurious force. The use of deadly and seriously injurious force is the most consequential act in which a law enforcement officer will engage.⁵ Any use of such force shall be circumscribed by the Constitutions and laws of the United States and the State of Colorado, this use of force policy, and all other relevant Denver Police Department policies, practices, and training.⁶ As in all police matters, officers should strive to exercise good judgment and act in an ethical manner.

⁵ Derived from Philadelphia Police Department, Directive 10 (January 2001) and Los Angeles Police Department Manual of Policy and Procedure, Vol. 1, §556 (2002).

⁶ In some respects Denver's use of force policies are more restrictive than the law demands, and laudably so. This language is intended to acknowledge that fact.

II. Deadly Force Definition

The current Denver definition of deadly force, based upon a Colorado statute, requires that the force does in fact have to result in death.⁷ This statutory formulation is uncommon. Most states and law enforcement agencies require that deadly force be defined as likely to produce death or serious physical injury, rather than death alone. The International Association of Chiefs of Police (IACP) Model Use of Force Policy concept paper states:

The model policy employs the terms deadly force and nondeadly force. Deadly force is defined as "force that creates a substantial risk of causing death or serious bodily harm."⁸

This makes sense. One would be hard-pressed to argue that an officer had not used deadly force if the bullet merely wounded but did not kill a suspect. It is also the case that less lethal force instruments or techniques may, in certain circumstances, also cause death or serious physical injury. For purposes of the DPD's use of force policy, we suggest expanding the definition beyond the confines of the Colorado statute.

We accordingly recommend revising the definition of deadly force along the following lines:

Deadly force is that degree of force, the intended, natural, and expected consequence of which, or the misapplication of which, is likely to produce death or serious bodily injury.⁹ Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives would be clearly ineffective, or other exigent circumstances exist.¹⁰

⁷ "Deadly Physical Force - That force, the intended, natural, and probable consequence of which is to produce death and which does, in fact, produce death." §105.00 (4) at 105-3.

⁸ IACP concept paper on model use of force policy, p.2

⁹ Derived in part from Washington, DC Metropolitan Police Department General Order 901.07 at 2 (2002).

¹⁰ Derived from Louisville Metro Police Department, Standard Operating Procedure 9.1 (April 2003). Denver does not currently have an exhaustion requirement. Those departments that have such a

III. Tactics and Strategy

Until recently, law enforcement agencies judged officer-involved shootings solely from the perspective of the criminal law—whether the officer, at the time he pulled the trigger, was justified in believing that he faced an imminent threat of death or serious bodily injury to himself or others. In nearly all instances, the officer can demonstrate an objectively reasonable belief that his life and safety of those of others were in peril. Accordingly, it is rarely the case that a District Attorney will prosecute a police officer in a shooting case. This exercise of prosecutorial restraint is appropriate for most cases—the criminal law alone is too blunt an instrument to deal with all the issues that arise when a police officer uses a firearm.

Increasingly, in an inquiry distinct from whether a deadly or seriously injurious use of force was justified under criminal law standards, police departments are focusing attention on tactics and strategy that lead to avoidable or unnecessary death or serious physical injury. Whereas few shootings are the result of criminal violations, some result from deficient policies, training, and strategic and tactical judgments. In order to reduce unnecessary and avoidable shootings, there needs to be close analysis of those deficiencies and remediation in their wake. Denver's District Attorney's Office has been a national leader in this effort. Led by Chuck Lepley and Lamar Sims, the DA's Office has produced excellent shooting reviews that do that. The DPD should routinely do a similar analysis. **We therefore recommend that the DPD include the following language or its equivalent in its use of force policy:**

Police officers should ensure their actions do not precipitate an unnecessary or avoidable use of deadly or seriously injurious force, placing themselves or others in jeopardy, by making tactical, strategic, and procedural errors.¹¹ Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.

requirement wish to emphasize that officers should contemplate less than lethal force alternatives, time and circumstances permitting.

¹¹ Derived in part from Philadelphia Police Department, Directive 10 (January 2001).

IV. Fleeing Felons

The DPD incorporates a Colorado statute in its use of force policy dealing with fleeing felons.¹² It provides that:

A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest or prevent the escape from custody, of a person whom he reasonably believes:

I. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

II. Is attempting to escape by the use of a deadly weapon; or

III. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

DPD policy is commendably more narrowly drawn than federal constitutional law on the subject as, for example, in its definition of felonies justifying the use of deadly force.¹³

Nonetheless, the policy could be improved if it were clearer that the threat of death or serious bodily injury must be imminent.

There is growing recognition within American law enforcement that deadly force should not be used unless the threat of serious physical harm to the officer or others is imminent or immediate. Accordingly, a growing number of law enforcement agencies have gone beyond the requirements of state and federal law and required their officers to hold fire

¹² Colorado Revised Statutes 18-1-707.

¹³ In 1985, the Supreme Court ruled in *Tennessee v. Garner* that the Fourth Amendment to the United States Constitution allows officers in some circumstances to use deadly force to stop a fleeing felon. Specifically, the Court held:

"Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.

Thus, if the suspect threatens an officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given." 471 U.S. 1, 11-12.

This language is arguably broader than the Colorado statute.

unless they have probable cause to believe that the fleeing felon presents an imminent threat to others. For example, in 1995, the US Justice and Treasury Departments revised their deadly force policies to include an immediacy requirement for fleeing felons. The Department of Justice policy states:

"Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:
(1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and
(2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person."¹⁴

The U.S. Treasury Department's policy contains the same restrictions. These policies forbid federal agents from firing upon fleeing felons unless there is probable cause to believe "the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person."¹⁵

The Washington, DC Metropolitan Police Department has followed suit and has amended its fleeing felon rule as follows:

"Members may use deadly force to apprehend a fleeing felon ONLY when every other reasonable means of effecting the arrest or preventing the escape has been exhausted AND,
a. The suspect fleeing poses an *immediate* threat of death or serious bodily harm to the member or others; OR
b. There is probable cause to believe the crime committed or attempted was a felony, which involved an actual or threatened attack which could result in death or serious bodily harm; AND
(1) There is probable cause to believe the person fleeing committed or attempted to commit the crime, AND
(2) Failure to *immediately* apprehend the person places a member or the public in *immediate* danger of death or serious bodily injury; AND

¹⁴ U.S. Department of Justice, Office of Investigative Agency Policies, Resolution 14, Attachment A (Oct. 16, 1995).

¹⁵ See Bolgiano, Leach, Smith, & Taylor, *Defining the Right of Self-Defense: Working Toward the Use of a Deadly Force Appendix to the Standing Rules of Engagement for the Department of Defense*, 31 U. Balt. L. Rev. 157, 170 (2002) (noting that the revised policies apply to the FBI, the U.S. Marshals Service, the Bureau of Prisons, the Bureau of Alcohol, Tobacco and Firearms, the Drug Enforcement Administration, the Secret Service, and the Customs Service).

(3) The lives of innocent persons will not be endangered if deadly force is used. (Emphasis Supplied.)¹⁶

The DPD use of force policy based upon the Colorado statute is somewhat opaque and confusing in that it talks in the same breath of "the use or imminent use" of deadly physical force; the "use or threatened use" of a deadly weapon; and the suspect's "likelihood to endanger human life or to inflict serious bodily injury to another unless apprehended without delay." The problem has to do with "the likelihood to endanger human life" language arguably not being applicable to the felony and escape provisions of the policy. It is the difference between "and" or "or" between subparagraphs II and III. It would be better if "and" were used instead of "or." As we later suggest, the DPD should substitute a formulation that adheres to Colorado law but is less confusing and potentially contradictory.

The DPD, along with the Phoenix Police Department and the LAPD, among others, commendably includes the notion that deadly force should be employed when an inappropriate delay poses a safety risk to the public and others. Current Denver policy states that an officer should not discharge firearms "when there is a likelihood of serious injury to persons other than the person to be apprehended."¹⁷

The LAPD provides:

An officer is authorized to use of deadly force when it reasonably appears necessary:

....

To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a *substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.*

....

¹⁶ Metropolitan Police Department General Order 901.07, at 7 (2002).

¹⁷ §105.04 (4)(d).

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.¹⁸

The current DPD Use of Force Policy restates at different places the circumstances under which a Denver police officer may discharge a firearm. There are potential inconsistencies between the various formulations. For example, the introduction at §105.00 does not allow an officer to discharge a firearm unless "all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly force is necessary." The beneficial language about the impracticability of reasonable alternatives is not repeated in the formulations at §105-04. **We therefore recommend consolidation in one place of the various formulations.**

Adoption of the Justice Department or Washington, DC Metropolitan Police Department standards quoted above would bring Denver in line with federal law enforcement agencies and other cities which have adopted rules requiring the threat justifying the use of deadly force be "imminent" and we recommend it. Alternatively, we recommend adoption of the formulation used by the LAPD as quoted above.

V. Reasonableness

Denver's use of force policy is replete with references to "reasonableness" in connection with discussions of all types of force. This section of the Report considers possible inconsistencies and misstatements between the various formulations in the policy. The use of the term "reasonableness" flows from the United States Supreme Court case of *Graham v. Connor*, 490 U.S. 386 (1989). In that case, the Court held that "the "reasonableness" of a particular use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." 490 U.S. at 386. "The calculus of reasonableness must embody allowance for the fact that

¹⁸ Los Angeles Police Department Manual of Policy and Procedure, Vol. 1, §556.40 (2007). (Emphasis added.)

police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396, 397. "As in other Fourth Amendment contexts, however, the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

The DPD policy defines "reasonable belief" to mean "when facts or circumstances the officer reasonably believes, knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances." It can be argued that this formulation is at variance with *Graham v. Connor* in its requirement that the officer act or think in a similar way to an ordinary and prudent person. The *Graham* standard should compare the officer to an objectively reasonable law enforcement officer, not an ordinary and prudent person. Moreover, the police officer need not think and act in a similar way. There may be more than one objectively reasonable way to handle a force situation. Because of these differences, **we recommend that the DPD adopt the specific language of the case in place of the current definition of "reasonable belief" as follows:**

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. The reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

At §105.00(4) and elsewhere throughout the Manual, the DPD sets forth considerations that bear upon reasonableness:

The following five (5) basic factors ["five scenarios"] are considered when determining "reasonableness." Bearing in mind that the standard is "totality of

the circumstances," these five (5) factors are not the only factors to be considered. The following have not been placed in a specific order of priority.

- (a) Imminent threat of injury to officers and/or others. The greater the level of the threat, the greater the level of force that may be used.
- (b) If the person is actively resisting seizure, the officer may escalate the justified (reasonable) level of force.
- (c) Circumstances are tense, uncertain, and rapidly evolving. Some incidents take hours to resolve, while others are over in seconds. The more tense, uncertain and rapidly evolving the incident, the higher the level of force that may be reasonable.
- (d) The more severe the crime, the more force that may be justified.
- (e) Attempting to evade seizure by flight may justify escalating the level of force.

The scenarios could be taken the wrong way. The DPD states that the greater level of threat, the greater level of force may be used. This may be confusing. The level of force in any circumstance must be objectively reasonable. The seriousness of the threat may bear little relationship to the amount of force that is objectively reasonable to take the suspect into custody. If a murderer can be safely taken into custody using one squirt of pepper spray, then shooting the individual would not be reasonable. **We recommend rephrasing the first scenario as follows:**

The more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

The Manual further states that active resistance by the suspect may escalate the force that can be used. This statement is arguably at variance with two excellent points made earlier in the introduction to the use of force policy:

It is important for officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. The person in question may not be capable of understanding the gravity of the situation. The person's reasoning ability may be dramatically affected by a number of factors, including but not limited to a medical condition, mental impairment, developmental disability, physical limitation, language, drug interaction, or emotional crisis. Therefore, it is possible that a person's mental state may prevent a proper understanding of an officer's commands or actions. In such circumstances, the person's lack of compliance may not be a deliberate attempt to resist the officer. An officer's awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer

when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from risk of imminent harm. Officers may either escalate or de-escalate the use of force as the situation progresses or circumstances change. Officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.

The Paul Childs case serves as an example. We recommend the DPD consider revising the scenario concerning active resistance to the following language or its equivalent:

An objectively reasonable and necessary response to active resistance may require more force than is necessary to counter defensive resistance, and a response to aggressive active resistance may require more force than is necessary to counter active resistance. The objective reasonableness of force requires consideration of the totality of the circumstances.

When time, circumstances, and safety permit, there may be alternatives to using force even if the force is proportional to the level of resistance. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.¹⁹

¹⁹ Based in part upon Los Angeles Police Department Manual, Volume 1, § 115.30, "Minimum Use of Force:" "The police should use physical force to the extent necessary to secure observance of the law or to restore order when the exercise of persuasion, advice, and warning is found to be insufficient to achieve police objectives; and police should use only the reasonable amount of physical force which is necessary on any particular occasion for achieving a police objective." See also § 240.10, "Use of Force:" "In a complex urban society, officers are confronted daily with situations where control must be exercised to effect arrests and to protect the public safety. Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been

The DPD's third scenario posits that the more tense, uncertain and rapidly evolving the incident, the higher the level of force that may be reasonable. This may be confusing.

The Supreme Court pointed out that officers are often forced to make split-second

exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm.” (2007)

See also Portland Police Bureau Manual of Policy and Procedure § 1010.10, “Deadly Physical Force:” “Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics.” (2007)

See also Chicago Police Department General Order 02-08, “The Use of Force Model,” (II)(B): “Whenever reasonable, members will exercise persuasion, advice, and warning prior to the use of **physical** force.” (II)(C): “When force is applied, a member will escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject’s resistance and to gain control... As the subject offers less resistance, the member will lower the amount or type of force used.” (2003):

See also Cincinnati Police Department Procedure Manual §12.545, “Use of Force” (2007)

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with simple directions given by an officer.

When officers are confronted with a situation where control is required to affect (sic) an arrest or protect the public’s safety, officers should attempt to achieve control through advice, warnings, and persuasion.

The suspect should be allowed to submit to arrest before force is used unless this causes unnecessary danger to the officer or others.

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest, and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to immediately de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to effect the arrest of a resistant subject...

Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be an appropriate response to a situation and should be considered.

judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. Even so, the level of force must be no greater than is objectively reasonable and necessary. **We recommend elimination of the third scenario in favor of our recommendation for revision of the first of the five scenarios.**

The DPD next states in the fourth scenario that the more serious the crime, the more force may be justified. This is confusing. The law requires that a given use of force be objectively reasonable and necessary. If an ax murderer can reasonably and safely be taken into custody with pepper spray, the fact of his being a murderer would not justify the use of a firearm. **We recommend eliminating this scenario.**

Finally, the DPD scenarios on reasonableness conclude with a statement that attempting to evade seizure by flight may justify escalating the level of force. Yet elsewhere in DPD's policies, flight in of itself of an unarmed subject may not merit any response. Again, only that level of force that is otherwise permitted by DPD policy and is objectively reasonable and necessary in the circumstances may be used. **We recommend eliminating this scenario.**

We recommend that five scenarios set forth at §105.00(4) be revised there and elsewhere in the Manual and training materials. The introduction at §105.00 already provides "the level of force applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is within the range of 'objectively reasonable' options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed." At §105.00 (2)(b), the DPD makes the further point that "[t]he community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same...." These statements correctly state the law. **It would be useful if the two statements were combined, and we so recommend. We recommend the following language:**

The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same. The level of force applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is necessary and within the range of “objectively reasonable” options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed.

VI. Disengagement

The DPD discussion of case law at §105.00(3) makes the point in isolation that a Colorado case, *Boykin v. People*, does not require an officer to retreat from an attack rather than resorting to physical force. Yet at §105.00(1), the DPD eloquently states in connection with the disabled that "when reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options." The two statements are conflictive and do not give clear guidance to a police officer whether he should or should not retreat.

The DPD is free to adopt a policy that is more restrictive than the law otherwise provides. On December 18, 2007, the Denver District Court ruled regarding the Paul Childs shooting that it was proper for the Civil Service Commission to conclude that it was fair to discipline a Denver police officer for a failure to disengage (in that instance, by backing off the porch) once circumstances had changed and the threat was no longer imminent.²⁰ In light of the foregoing, and because it would accord with best practice, **we recommend adoption of the following language and deletion to the reference to the *Boykin* case:**

²⁰ *Turney v. Civil Service Commission et al.*, 07 CV 4025, Court Order of December 18, 2007.

When reasonable and safe under the totality of circumstances, officers must use advisements, warnings, verbal persuasion, and other tactics. Additionally, under the totality of the circumstances, an officer should de-escalate force, including, when reasonable and safe, disengaging to a position that is tactically more secure or allows an officer greater distance, if to do so will reduce the immediacy of the threat and allow more time for the officer to call for backup or to consider or deploy a greater variety of force options.²¹

VII. Drawing and Displaying a Firearm

Although the mere drawing and displaying of a firearm does not amount to deadly force, it may substantially increase the likelihood that deadly force will result, including increasing the risks of accidental discharges or the suspect's disarming the officer. The DPD's deadly force policy does not provide officers with guidance regarding when it is appropriate to draw and point their weapons. DPD training materials do, however, advise officers "to not deploy the muzzle at anything you are not willing to destroy" and "keep your finger off the trigger until your sights are on the target and you are prepared to shoot."

An increasing number of agencies are adopting formal policies identifying when it is appropriate to draw or point a firearm. A key purpose in adopting a formal rule is to provide officers with concrete guidelines and, if necessary, to establish a basis for accountability for deviations from the guidelines.

For example, the LAPD's policy on drawing and pointing weapons provides:

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety

²¹ Based in part upon Cincinnati Police Department Manual §12.545 (USE OF FORCE): "Police officers have a number of options available when confronted with a situation that requires use of force. Force decision making will reflect not only the amount of resistance encountered but also factors related to the officer and subject involved as well as circumstances in the particular environment where the incident occurs. There may be circumstances where the best option is to disengage and wait for other officers, contain the individual without engaging him, or simply wait him out..."

on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms.²²

The Los Angeles Board of Police Commissioners in 1977 adopted the following interpretation of the policy quoted above:²³

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm.

We recommend that the DPD adopt the following or similar language based on LAPD policy cited above:

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation will escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm.

In Washington, DC, among other places, officers are required to report when they draw or exhibit a firearm and such incidents are tracked. The DPD should adopt the same requirements. **The drawing or displaying of a weapon is use of force and should be reported and tracked as such.**

²² Los Angeles Police Department Manual of Policy and Procedure, Vol. 1, §556.80 (2007).

²³ *Ibid.*

VIII. Tasers

A. Active Aggression

The DPD has a written policy concerning the use of the Taser (§105.02) which, together with its training materials, make Denver a leader in this area. Among other provisions, an excellent Taser policy will provide that Tasers should not be used against passive or minimally active resisters but rather against active aggression. Denver's policy at §105.02 (4)(5) does so, stating:

Acceptable uses of the... Taser include:

1. To incapacitate a combative or physically resistive person whose conduct rises at least to the level of Active Aggression ... [defined as] a threat or over act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. OR
2. In situations where it seems its use is likely to prevent an officer or a third person from serious bodily injury OR
3. To incapacitate a suicidal person who cannot be safely controlled with other force options.

To make this policy even better, **we recommend revising the second numbered paragraph to provide that the Taser may be used "in situations where it is reasonably necessary to prevent an officer or a third person from an imminent threat of death or serious bodily injury."**

We note a problematic inconsistency between the Taser policy as set forth above and training materials for Taser operators provided by Taser International and used by the DPD. Whereas the policy provides that the suspect's resistance must reach the level of "Active Aggression" before a Taser can be used, the Taser International training materials only require "Defensive Resistance," defined as "physical actions that attempt to prevent an officer's control including flight or attempt to flee, but do not involve attempts to harm the officer." **We recommend that the training materials be amended so that "active aggression" is minimally required**²⁴

²⁴ There is an additional inconsistency between the training materials for the Taser operator course and the Patrol Division Officer training course. The latter requires active aggression for use of a Taser while the former, as noted earlier, only requires defensive resistance.

B. Limitations

Denver commendably bans the use of less than lethal weaponry "to the head, eyes, throat, neck, breasts of the female, genitalia or spinal column" unless deadly force is warranted. Similarly, it bans use of the Taser on a pregnant female if the officer had knowledge of the pregnancy and in or on an open wound if the officer has knowledge of it. The DPD also bans the Taser near flammable gases or liquids or at drug houses where ether or other flammable chemicals are suspected. These provisions comport with prevailing national standards. **We nonetheless recommend expanding the circumstances under which the Taser shall not be used. The Las Vegas Metropolitan Police Department has done just that:**

The TASER® will not be used:

- 1. when the officer knows a subject has come in contact with flammable liquids or is in a flammable atmosphere;**
- 2. when the subject is in a position where a fall may cause substantial injury or death;**
- 3. punitively for purposes of coercion, or in an unjustified manner;**
- 4. when a prisoner is handcuffed;**
- 5. to escort or jab individuals;**
- 6. to awaken unconscious or intoxicated individuals; or**
- 7. when the subject is visibly pregnant, unless deadly force is the only other option.**

The TASER® should not be used in the following circumstances (unless there are compelling reasons to do so which can be clearly articulated):

- 1. when the subject is operating a motor vehicle;**
- 2. when the subject is holding a firearm;**
- 3. when the subject is at the extremes of age or physically disabled; or**
- 4. in a situation where deadly force is clearly justifiable unless another officer is present and capable of providing deadly force to protect the officers and/or civilians as necessary.²⁵**

Additionally, we recommend expanding the list of vulnerable persons to include, among others, the disabled, juveniles, people with known or suspected heart problems or neuromuscular disorders such as muscular sclerosis, muscular dystrophy, or epilepsy.²⁶

²⁵ Las Vegas Metropolitan Police Department Procedural Order 43-04, November 4, 2004, pp. 2, 3.

²⁶ "Electronic Control Weapons: Concepts and Issues Paper," IACP National Law Enforcement Policy Center, 1996, revised January 2005.

C. Drive Stun Mode

The policies of many police departments address the concern that the drive stun mode for Tasers is painful to subjects and puts them at higher risk for burns and secondary injury.²⁷ The fact that drive stun mode can only be used at close range has prompted concerns about officer safety to the extent that an officer must be within inches of a subject to employ the Taser in that mode. Using the Taser in drive stun mode raises the risk that it will be used punitively or inappropriately against persons who are already under police control. The Police Executive Research Forum (PERF), Amnesty International, and Taser International recommend that the drive stun be used primarily as a back-up when the cartridge has proven ineffective or circumstances preclude its use.²⁸ A recent study

²⁷ Tasers work by releasing a high-voltage, low-amperage electrical charge into the body. The X26 carries a charge of about 50,000 volts and .0021 amperes, which is intense but generally does not deliver enough electricity to substantially affect heart rate or to kill. An officer can employ a Taser in one of two modes: cartridge, or “probe,” mode and drive stun, or “contact,” mode. Both modes deliver the same amount of electricity for the same duration. Each pull of the trigger of a Taser mechanism initiates a 5-second cycle of electrical charge, which an officer can interrupt by applying the safety mechanism or extend by holding down the trigger.

In cartridge mode, the Taser is generally activated from 15-35 feet away. A disposable nitrogen cartridge shoots two fishhook-like darts or probes into the body of a subject, which completes an electrical circuit and delivers a 5-second series of electrical charges. Both darts must attach to the subject in order for the current to be completed; the further that these darts are from each other, the more powerful the charge. The electrical “noise” that the Taser introduces overrides the body’s own electrical signals, causing involuntary muscle contraction that causes temporary incapacitation and, usually, collapse.

In drive stun mode, the Taser is pressed directly to the body. Unlike an application of the Taser in cartridge mode, a drive stun does not affect the motor nervous system, or muscle control, because the electrodes are too close together. It does, however, affect the sensory nervous system, causing extreme pain, and is thus considered a “pain compliance” technique, similar to OC spray. Drive stun mode can be effective when the cartridge has been removed or fired; however, if there is a cartridge inserted into the mechanism, that cartridge will not fire when the device is pressed against the subject, with the unit defaulting to drive stun mode.

Because it is used at close range and is exclusively used to cause pain, groups like Amnesty International are particularly concerned about the drive stun’s potential for abuse of persons who are already in custody. In training materials, Taser International promotes drive stun primarily as a back-up technique for when darts fired in cartridge mode have missed their target or when probe mode has otherwise not proven to be effective in a particular situation. It is also promoted as a way to subdue a person who is resisting arrest.

²⁸ See, e.g. “Excessive and Lethal Force? Amnesty International’s concerns about deaths and ill-treatment involving police use of tasers,” Amnesty International, November 2005.

found that 40 percent of agencies explicitly state the drive stun mode is to be used only as a backup or secondary mode.²⁹

The Las Vegas Metropolitan Police Department has an exemplary policy in this regard:

Use of the “Drive Stun” is discouraged except in situations where the “probe” deployment is not possible and the immediate application of the “Drive Stun” will bring a subject displaying active, aggressive or aggravated aggressive resistance safely under control. Multiple “Drive Stuns” are discouraged and must be justified and articulated on the Use of Force form. If initial application is ineffective, officer will reassess situation and consider other available options.³⁰

We recommend that the DPD adopt this or similar language. We also would include a provision that mild resistance— such as bracing oneself or squirming— shall not constitute "active resistance" for purposes of applying the Taser in drive stun mode.³¹

D. Warnings

Because the shock from a Taser constitutes a significant and painful use of force, officers should give suspects—unless they present an imminent danger to the officers, themselves, or others—an opportunity to comply with officer instructions before deploying the device. In many cases, simply the threat of a shock from the Taser will

²⁹ Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration.” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 106.

³⁰ Las Vegas Metropolitan Police Department Procedural Order 43-04, November 4, 2004, p 3.

³¹ PARC had occasion to investigate the use of a Taser in drive stun mode by campus police on a student at UCLA. *A Bad Night at Powell Library: The Events of November 14, 2006* (August 2007), www.parc.info. One of the issues in the case was whether mild resistance like bracing or squirming was closer to “passive resistance,” where would have violated UCLA policy to use the Taser in drive stun mode, or “active resistance,” where its use would have been permitted. For purposes of clarity and policy, we recommended the additional language proposed herein.

preclude the necessity of deploying the device, providing that the subject has been given the opportunity. Although there may be situations in which giving a warning is ill-advised or impractical, such as those in which an involved person is in imminent danger, many police department policies, as well as the Lexipol model policy, require the use of a warning in most situations.³²

Although the DPD' s policy does state that a warning to other officers be given prior to deployment of a Taser (§105.02), it does not explicitly provide for a warning to the suspect. **The DPD should consider adding to its policy that the officer should give "the subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to comply" unless doing so would subject any person to the risk of bodily injury or death.**³³ **We recommend that the DPD adopt this or similar language regarding a reasonable opportunity to comply. Here, the policy and the training materials are different. In the training materials, it is recommended that the Taser officer shout "Taser, Taser, Taser!" for the benefit of the suspect and other officers. This latter point should be incorporated in policy.**

E. Multiple Discharges

Reviews of deaths following the use of the Taser have found that a disproportionate percentage of the deaths occurred after the individual had been shocked multiple times.³⁴ This correlation has not been rigorously researched, but it nonetheless has led PERF to

³² 308.53, Use of the Taser," Lexipol Model Policy. Lexipol is an organization based in Southern California that develops policy manuals and model policies for law enforcement agencies.

³³ 308.53, Use of the Taser," Lexipol Model Policy. The DPD Operations Manual defines "serious bodily injury" to be: "Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree." §204. 01(2).

³⁴ See especially: "Excessive and Lethal Force? Amnesty International's concerns about deaths and ill treatment involving police use of tasers," Amnesty International, November 2005; Anglen, Robert, "167 cases of death following stun-gun use," *Arizona Republic*, 05 January 2006; and Johnson, Will et al., "Conducted Energy Devices: PERF's National Studies and Guidelines for Consideration," *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 120.

observe that, “multiple activations and continuous cycling of a CED [conducted energy device] appear to increase the risk of death or serious injury and should be avoided where practical.”³⁵ Taser International, the manufacturer and marketer of the Taser, notes that “in some circumstances, in susceptible people, it is conceivable that the stress and exertion of extensive, repeated, prolonged, or continuous application(s) of the Taser device may contribute to cumulative exhaustion, stress, and associated medical risk(s).”³⁶ Multiple applications of the Taser without reevaluation of the situation may ignore important changes in the circumstances which might render subsequent use of the device unreasonable. In a study of 74 police department policies, PERF found that 28 percent included language providing “a specified threshold for abandoning the CED in favor of another weapon.”³⁷ Both PERF and IACP recommend restricting the repeated use of the Taser to the number of times that is “reasonably necessary.” PERF also recommends that officers stop to reevaluate before each additional application of the device.

Accordingly, we recommend that the DPD adopt the following or similar language taken principally from the PERF model policy:

When activating a Taser, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody. Training should include recognizing the limitations of CED activation and being prepared to transition to other force options as needed.

F. Drawing and Displaying a Taser

The display of a Taser is, in itself, a use of force. **IACP recommends that the display of the Taser be prohibited unless the officer has an objectively reasonable belief that**

³⁵ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

³⁶ “Product Warnings—Law Enforcement,” TASER International, 01 March 2007

³⁷ Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration.” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 106.

the discharge of the Taser is imminent.³⁸ DPD's current policy does not so provide and we recommend that it should.

The Las Vegas Metropolitan Police Department policy, as well as the model policies of IACP, Lexipol, and PERF can be found in the Appendix to this report. The Appendix also contains a chart comparing and contrasting Taser policies of police departments across the United States.

IX. Foot Pursuits

In 2005, the DPD published a Training Bulletin on the subject of foot pursuits.³⁹ Denver

³⁸ "Electronic Control Weapons: Concepts and Issues Paper," IACP National Law Enforcement Policy Center, 1996, revised January 2005.

³⁹ In relevant part, the Bulletin provides the following guidance to Denver officers:

- (5) Tactics and Considerations**
 - 1. Tactics and the legal reason for the pursuit, not emotion, should determine your actions
 - 2. If working with a partner – stay together
 - 3. If you lose sight of the suspect – stop, scan, and listen
 - 4. Don't abandon unsecured suspects
 - 5. Don't run past a suspect vehicle that hasn't been cleared.
 - 6. Remember to tactically clear all corners you encounter (pie the corner) – prepare for possible ambush
 - 7. Do not pursue into a building – stop and set your perimeter
 - 8. As you are running scan the area for cover, hazards, items the suspect may have tossed
 - 9. Don't follow the suspect's exact path – flank out
 - 10. Use extreme caution when contacting the suspect – challenge from cover and wait for additional officers before approach
 - 11. Running with your weapon:
 - a. Pro's – Readily accessible
 - b. Con's – **High Risk** of negligent discharge; weapon retention issues if suddenly confronted by the suspect
- (6) Pursuing Officer(s) Responsibility:**
 - ...
 - e. Pursuing Officers should terminate a Foot Pursuit:
 - 1. If the officer believes that the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the suspect.
 - 2. If ordered by a supervisor.
 - 3. If the officer loses possession of their firearm.
 - 4. If the primary officer loses communications with the dispatcher or cover officers.
 - 5. If the primary officer is unsure of their location or direction of travel.
 - 6. In buildings, structures, confined spaces, or otherwise isolated areas if the suspect's location is not known and without sufficient backup and containment of the area.
 - f. Officers are reminded that if a foot pursuit is terminated for any of the above reasons, it does not automatically follow that we abandon attempts to apprehend the suspect.

was one of the first police departments in the nation to articulate a responsible set of guidelines, and for that we commend the Department. Like other law enforcement agencies, the DPD Training Bulletin lists factors that an officer should take into consideration when contemplating whether to begin or end of foot pursuit. Likewise, the DPD Bulletin contains few outright prohibitions. While the Denver Bulletin meets national standards, there are ways in which to turn it into a best practice. **The IACP Model Policy, which we recommend, is more prescriptive about when a police officer shall terminate a foot pursuit:**

D. Guidelines and Restrictions

- 1. The pursuing officer shall terminate a pursuit if so instructed by a supervisor.**
- 2. Unless there are exigent circumstances such as an immediate threat to the safety of other officers or civilians, officers shall not engage in or continue a foot pursuit under the following conditions:**
 - a. If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension.**
 - b. If the officer becomes aware of any unanticipated circumstances that substantially increases the risk to public safety inherent in the pursuit.**
 - c. While acting alone. If exigent circumstances warrant, the lone officer shall keep the suspect in sight from a safe distance and coordinating containment.**
 - d. Into buildings, structures, confined spaces, or into wooded or otherwise isolated areas without sufficient backup and containment of the area. The primary officer shall stand by, radio his or her location, and await the arrival of officers to establish a containment perimeter. At this point, incident shall be considered a barricaded or otherwise noncompliant suspect, and officers shall consider using specialized units such as SWAT, crisis response team, aerial support, or police canines.**
 - e. If the officer loses possession of his firearm.**
 - f. If the suspect's identity is established or other information exists that allows for the suspect's probable apprehension at a later time and there is no immediate threat to the public or police officers.**
 - g. If the suspect's location is no longer known.**
 - h. If primary officers lose communications with EOC or communication with backup officers is interrupted.**
 - i. If an officer or third party is injured during the pursuit who requires immediate assistance and there are no other police or medical personnel able to render assistance.**

Officers should employ other tactical alternatives as listed above, and may re-initiate a foot pursuit if conditions change to the extent that a foot pursuit can be engaged in safely.

- j. If the officer loses visual contact with the suspect.**
- k. If the officer is unsure of his or her own location or direction of travel.**

The DPD Training Bulletin is of concern in two respects: it is a bulletin and not part of the Manual and there are too few bright line prohibitions.

As stated by the IACP in its Model Policy, "foot pursuits are inherently dangerous police actions." The IACP goes even further in its Concepts and Issues Paper of February 2003 on the subject: "no officer wants to become engaged in a foot pursuit if it can be avoided." The FBI, in its Law Enforcement Bulletin, explains why:

On a daily basis, law enforcement officers encounter many situations that potentially place them in grave personal jeopardy. While this depicts the nature of the profession, all too frequently, officers increase the likelihood of personal injury by their desire to apprehend offenders at all cost. Their keen sense of justice and their desire to keep their communities safe from social predators sometimes cloud their judgment, which can increase the possibility of harm to themselves. While engaged in such activities as foot chases and vehicle pursuits, officers often exhibit a tendency to rush into what can be described as "the killing zone," that is, within a 10-foot radius of the offender....

Officers continually need to remind themselves that, when entering the killing zone, they must become exceedingly aware of the increased possibility of injury to themselves. For example, from 1990 to 1999, nearly 75 percent of officers feloniously killed died within that 10-foot radius of the offender.⁴⁰

We recommend that Denver convert its bulletin into Department policy and tighten it along the lines of the IACP Model Policy. Later in this Report, we identify foot pursuits that should not have happened. These foot pursuits nonetheless probably would pass muster under the current Training Bulletin. In order to discourage such pursuits in the future, the DPD should have the ability to hold them out of policy. To do so requires bright line rules like those set forth in the IACP policy.

Lastly, we note that the DPD uses *lineofduty.com* in its foot pursuit training. The video teaches bad habits and does not conform to prevailing national standards. Although the

⁴⁰ FBI Law Enforcement Bulletin, Vol. 71, p.1 (March 2002).

DPD trainer takes pains to point out inconsistencies between the video and the DPD's Training Bulletin, **we recommend that the Department produce a video of its own on this important topic.**

X. Canine Policy

The DPD's canine policy dates from 2005 and is contained in the Metro/SWAT Canine Unit Manual. The policy meets prevailing national standards yet could be made even better. In another context, PARC examined jury verdicts in canine cases that went to trial. Five factors stood out in those cases where the jury found for the plaintiff:

1. A canine announcement was not made prior to deployment of the dog or the announcement was not heard by the plaintiff or others in the vicinity, or
2. The canine was deployed on a juvenile, or
3. The crime committed by the suspect was relatively minor, or
4. The injuries sustained were serious, or
5. The dog did not immediately release the bite or the handler required that the suspect be totally passive before the bite was released.

A. Announcements

The DPD canine policy requires that a canine announcement being made three times, including once in Spanish. The warnings are to be given in a loud, clear voice; the handler is required to wait and listen for a response before releasing the dog; and the language of the warning, at least in English, is standardized. The warning can be dispensed with if there is an immediate danger to the officer and it is not tactically sound to give a warning. This latter point should be expanded to include an immediate danger to third parties or others. Afterward, the handler must report the circumstances for dispensing with a verbal warning to a canine unit supervisor.

We recommend that the DPD consider augmenting its policy regarding announcements to include the following:

- 1. The announcement should be made by amplification or public address system whenever possible.**
- 2. If significant time passes between the warning and deployment of the dog, the warning should be repeated.**
- 3. Sufficient time should be afforded before release of the dog to permit third parties and bystanders to leave the area.⁴¹**

DPD policy currently states that no warning need be given "if there is an immediate danger to the officer, and it is not tactically sound to give the verbal warning." When no warning is given, the handler is required to "articulate the circumstances in writing" to a supervisor who shall then make "a recommendation as to the validity of the circumstances to the Commander of the Metro/SWAT Bureau for review." The circumstances in which an announcement may be dispensed with should be spelled out more clearly and advance approval should be required.

The Los Angeles County Sheriff's Department (LASD) has considered these issues and has limited deployments without an announcement to instances where the suspect is believed to be armed. It further requires that approval to dispense with a warning be made in advance by the highest-ranking on-scene supervisor, preferably a lieutenant or higher:

A recommendation to not make a canine deployment announcement must be approved by the ranking Department supervisor in command at the scene of the incident. A decision not to make a deployment announcement should be made by a lieutenant or higher. When conducting area searches for suspects believed to be armed, concerns for the safety of search personnel may dictate that an announcement not be made. In these instances, the canine handler will advise the on-scene supervisor of the reasons for precluding an announcement and abide by subsequent direction. Individual handlers shall articulate the justification for not making canine announcements on a canine activation form and supplemental report. These reports shall be reviewed by the [Metro/SWAT]

⁴¹ See, e.g., IACP Models Policy on law enforcement canines (August 1991) (Revised September 2001).

captain and the Canine Review Committee.⁴²

We recommend that a four-part test be employed to identify circumstances where the announcement might not be given:

- 1. The foreknowledge that there is likely to be one or more suspects armed with guns or another instrumentality likely to result in death or serious bodily injury**
- 2. in a contained location where an officer ambush was possible, combined with**
- 3. a tactical demand for stealth or surprise based upon strong considerations of officer safety,**
- 4. and no reasonable alternative will suffice to extract the suspects.⁴³**

We recommend that the DPD adopt this formulation and additionally require advance approval along the lines of the LASD policy. The decision to dispense with the warning should not be made by the handler alone. Among other factors, the liability risk is simply too great and the potential for serious injury too high.

B. Juveniles and Other Vulnerable Persons

The DPD canine policy requires that handlers specifically consider "the age and/or physical stature of the suspect, especially in the case of juvenile suspects for whom the level of injury from a canine bite may be much more severe than for an adult, and who may not be able to follow the directions of the canine officer." **The DPD should consider tightening this policy. The LASD does so in the following way, limiting canine searches to:**

Searches for felony suspects, or armed misdemeanor suspects, who are wanted for SERIOUS crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine. Searches for suspects wanted for Grand Theft Auto shall be limited to those who are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle. Known

⁴² LASD Field Operations Directive 86-37 (Revised April 1999) (emphasis in original).

⁴³ Based on LASD Field Operations Directive 86-37 (Revised April 1999); IACP Law Enforcement Canine Model Policy

passengers, absent extenuating circumstances, should not be searched for with the use of a police service dog. (Emphasis in original.)⁴⁴

We recommend that the DPD consider inclusion of this or similar language. The IACP Model Policy also provides that canines "should not be used to apprehend anyone suspected to be under the influence of drugs or alcohol if no other crime is involved, nor the mentally disturbed if no other crime is involved."⁴⁵ We recommend inclusion of these concepts also.

C. Seriousness of the Crime

The Department of Justice and the IACP, in a joint statement, recognize that canine searches should be limited to persons "suspected of having committed a serious or violent felony."⁴⁶ The DOJ Consent Decree in Prince George's County provides that canine searches be limited to "situations ... in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is either known to be armed or is reasonably believed to be armed based upon particularized, specific facts."⁴⁷ **As noted above, the LASD limits searches to felony suspects or armed misdemeanants wanted for serious crimes. We recommend that the DPD consider similar restrictions and adopt the LASD policy or equivalent language.**

D. Off-Leash Searches

Denver permits off-leash searches in open areas. In its Memorandum of Agreement with Cincinnati, DOJ limited off-leash searches to "commercial buildings or instances in which the suspect is wanted for an offense of violence or reasonably is suspected to have a weapon."⁴⁸ Unquestionably, it is more difficult to control a dog off-leash. The dog may be substantially out ahead of the handler. It may hold the bite for too long. **We**

⁴⁴ LASD Field Operations Directive 86-37 (Revised April 1999)

⁴⁵ IACP Law Enforcement Canine Model Policy, ¶A (6), p.2 (as revised September 2001).

⁴⁶ United States Department of Justice and IACP Recommendations on Police Service Dogs.

⁴⁷ Prince George's County Consent Decree, January 22, 2004 ¶34, p. 9.

⁴⁸ Memorandum of Agreement, April 12, 2002, (C)20(b).

recommend Denver consider restricting off-leash searches in open areas.

E. Releasing the Bite

In setting forth the duties and responsibilities of canine officers, the DPD policy states that "all Police Service Dogs will be trained to immediately disengage from the pursuit or physical canine apprehension on command of the canine officer."⁴⁹ In so doing, the DPD laudably appears to recognize the danger of greater injury the longer the dog holds the bite on a suspect. It is the practice in some law-enforcement agencies for the dog to continue to bite until the suspect is absolutely passive. That practice has led to unnecessary injury because of a failure to recognize that most persons will struggle while being bitten. In recognition of this potential, law enforcement agencies have augmented their rules for release of the bite along the following lines:

In keeping with the [Department's] use of force policy, wherein we are mandated to use only the level and amount of force necessary to overcome resistance, the following direction relating to the use of [Department] canines will be adhered to by all handlers. In situations where a ... canine finds or bites a suspect, the concerned handler will as rapidly as possible assess the need for their canine to contain or seize the suspect. At the first possible moment that it is determined that the suspect is not carrying a weapon, the canine will be called off. This will be accomplished without delay. Handlers will factor into their call-off decision the fact that the average person will struggle if being seized by a canine. This struggling, alone, will not be cause for not calling of the canine.⁵⁰

We recommend that the DPD Canine Policy be augmented to include the language cited above or similar language.

F. Handler control

Although it is a mistake to classify canines as deadly force per se (courts have explicitly rejected this approach), few will argue that a police dog is incapable of causing serious

⁴⁹ Metro/SWAT Canine Unit Manual, p. 3 (emphasis in original).

⁵⁰ LASD Field Operations Directive 86-37 (Revised April 1999) (emphasis in original).

bodily injury. As such, there is a premium put on a handler's ability to control the dog at all times. The 11th Circuit stated:

The severity of an apprehended suspect's injuries can be reduced if the handler has complete control over the actions of his dog. With such control, the handler can recall or restrain the dog before a bite even occurs. Alternately, the handler can quickly remove the dog from the apprehended suspect, minimizing the possibility that the suspect will be further injured in an ensuing struggle. Since a police dog that is apprehending a fleeing suspect is often far in front of its handler, canine law enforcement training stresses the use of oral commands, which the dog can obey even when its handler is at a distance.... In addition, the evidence established that the canine unit's handlers often used very long leashes—up to thirty feet in length—and that the length of these leashes was blamed by some for the officers' lack of adequate control over their dogs and the resulting high frequency of injury to apprehended suspects.

Because a dog's responsiveness to its handler's commands may erode over time, police dogs need continual training to assure that they will perform responsibly. To ensure that misbehaving dogs receive prompt corrective training, a strict performance monitoring system is necessary.⁵¹

DPD policy alludes to the importance of handler control when it states that prior to releasing the dog off-leash a handler must consider "circumstances that may adversely impact the handler's ability to assure uninterrupted handler control of the canine if off-lead." **We recommend that the DPD regularly test its handlers in real-life scenarios on their ability to control the dogs on leash and off leash; when the dog is ordered to release a bite; when the dog is ordered to bite; and whether the dog can bark and hold without biting.**

XI. Shooting at or from Motor Vehicles

In a clear national trend, law enforcement agencies are demanding that officers move out of the way and restrain themselves from firing at moving vehicles. The IACP explains it this way:

Another modification addressed in revisions of the *Model Policy on Use of Force* involves shots fired at or from moving vehicles. The model policy takes the position that this issue, like that of warning shots, must be

⁵¹ Kerr v. West Palm Beach, 875 F.2d 1546, 1550-51 (11th Cir. 1989).

governed by the overall use-of-force policy. However, it must be made clear that there are substantial additional risks in the discharge of firearms under these conditions. The likelihood of misses and subsequent risks of errant shots harming innocent parties is increased under these conditions. It is also improbable that an officer could stop a vehicle or its operator in this manner without causing death or serious injury. Therefore, these are among the factors that counsel against such actions other than in the most extreme circumstances.

The model policy takes the position that “decisions to discharge a firearm at or from a moving vehicle shall be governed by this use-of-force policy and are prohibited if they present an unreasonable risk to the officer or others.”

Again, training is essential in implementing this policy. Officers must recognize that such actions are only permitted under extreme circumstances and, because they generally involve a higher potential risk, they carry a higher burden of justification for use. It must be understood that the use of firearms under such conditions often presents an unacceptable risk to innocent bystanders. Handguns are generally ineffective in attempts to disable a motor vehicle, if in fact this is the intent of their use. And even if successfully disabled, the vehicle will most likely continue under its own power or momentum for some distance thus creating another hazard. Moreover, should the driver be wounded or killed by shots fired, the vehicle will almost certainly proceed out of control and could become a serious threat to officers and others in the area.

Most conventional police firearms, in fact, will normally fail to penetrate automobile bodies, or steel-belted automobile tires that are in motion, and frequently do not penetrate auto safety glass. Again, as in the case of the use of warning shots, firing at a motor vehicle is an extreme measure that may only be taken under highly unusual circumstances and generally when all other reasonable alternatives have been exhausted or would be perceived as unacceptable.

There are circumstances in which trained tactical officers with appropriate weaponry may take such actions if deemed appropriate by command personnel. Even under these circumstances, such actions should be taken only if the action does not permit an unreasonable risk to officers or others, when reasonable alternatives have been exhausted, when failure to take such action would probably result in death or serious bodily harm, and then only when due consideration has been given to the safety of innocent bystanders. In many cases involving the discharge of firearms at a moving vehicle, it is based on the contention that the driver was intentionally attempting to run the officer down. One of the simplest alternatives to the use of a firearm in this instance is to move out of the vehicle's path and/or seek cover.⁵²

⁵² IACP concept paper on model use of force policy, pp.5-6.

Leading law enforcement agencies, including the LAPD and the LASD, have adopted bright line prohibitions. The Los Angeles County Sheriff's Department provides:

The use of firearms against moving motor vehicles is inherently dangerous and almost always ineffective.

For the purposes of this section, an assaultive motor vehicle shall not presumptively justify a Department member's use of deadly force. A Department member threatened by an oncoming motor vehicle shall move out of its path...

A Department member shall not discharge a firearm at a motor vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the member has an objectively reasonable belief that:

- The vehicle or suspect poses an immediate threat of death or serious physical injury to the Department member or another person, AND
- the Department member has no reasonable alternative course of action to prevent the death or serious physical injury.⁵³

The LAPD provides the following reasons for prohibiting shots at or from moving vehicles:

- Bullets fired at moving vehicles are extremely unlikely to stop or disable the moving vehicles.
- Bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons.
- The vehicle might crash and cause injury to officers or other innocent persons if the bullets disable the operator.
- Moving to cover, repositioning and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for using deadly force.
- Shooting accurately from a moving vehicle is extremely difficult and therefore unlikely to successfully stop or prevent a threat to the officer or other innocent persons.

The current DPD policy on shooting at motor vehicles states:

Firing at or from moving vehicles: Except in self defense or defense of another from what the officer reasonably believes to be the use or imminent use of deadly physical force. Firing at or from a moving vehicle may increase the risk of harm to other officers or citizens. Accuracy may be severely impacted when firing from a

⁵³ LASD Policy Manual 3-01/025.40

moving vehicle; firing at a moving vehicle may have very little impact on stopping the vehicle. Disabling the driver may result in an uncontrolled vehicle, and the likelihood of injury to occupants of the vehicle (who may not be involved in the crime) may be increased when the vehicle is either out of control or shots are fired into the passenger compartment. If officers find themselves in danger from a moving vehicle, they should attempt to move out of the way, if possible, rather than discharging their firearm. Above all, the safety of the public and the officer must be the overriding concern when the use of force is considered.⁵⁴

We are concerned that the policy may be overly permissive. We recommend that the DPD adopt the following formulation:

A Department member shall not discharge a firearm at a motor vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the member has an objectively reasonable belief that:

- **The vehicle or suspect poses an immediate threat of death or serious physical injury to the Department member or another person, AND**
- **the Department member has no reasonable alternative course of action to prevent the death or serious physical injury.**

An officer threatened by an oncoming vehicle shall move out of its path, if at all possible, instead of discharging a firearm at it or any of its occupants.⁵⁵

XII. Vehicular Pursuits

We commend the DPD for its thorough, detailed, and thoughtful policy in the area.

XIII. Impact Weapons

The DPD's policies permit the use of flashlights and saps as impact weapons. The policies do not specifically prohibit the use of pistols as impact weapons. We recommend that flashlights, pistols, and saps be prohibited from use as impact weapons as explained below.

A. Flashlights

⁵⁴ [Citation] Denver's Independent Monitor discussed this policy in his *2006 Annual Report* in Chapter 6, pp.13-16.

⁵⁵ Formulation based upon LAPD Policy Manual, §556.40, (2007, 4th Quarter); LASD Policy Manual 3-01/025.40.

The flashlight may, in some circumstances, prove to be a more readily-accessible weapon than a baton—particularly when deputies already have the flashlight in their hand when confronting a person. Nonetheless, flashlights should not be considered appropriate equipment for routine use as impact weapons, and the DPD should consider carefully whether such use should be banned or highly regulated.

In addition to their use in control holds, batons are designed to be used as impact weapons, and can be selected according to characteristics that relate to this function. Flashlights, meanwhile, are designed as illumination devices, and are unlikely to possess characteristics that render them suitable for impact. The risk of injury associated with flashlight strikes is particularly significant with the flashlights often used by police officers: large, multi-cell models, which typically have a more angular design and greater weight than authorized batons.

The dangers of using flashlights as impact weapons have been known since at least 1985. The authors of a leading study demonstrated that flashlights are significantly more dangerous than batons: They measured the degree of force that results from a blow with a five-cell metal flashlight with a squared-off tail cap (a flashlight that many law enforcement officers are permitted to carry in the field), and found that, “if the flashlight is swung such that it strikes the skull at an angle, the possibility of a fracture of the skull is very likely, and almost a certainty if the blow is delivered near the eye socket or the temporal region of the head.” The authors conclude that with a flashlight, the risk of striking the eye socket or temporal region is significant.⁵⁶

More recently, Americans for Effective Law Enforcement (AELE), a not-for-profit educational corporation that provides research-based educational support to law enforcement professionals, has identified the following characteristics of flashlights that may make their use as an impact weapon inappropriate:

1. Inadequate length for effective use as tactical weapon

⁵⁶ *Journal of Police Science and Administration*, “Police Use of Metal Flashlights as Weapons: An Analysis of Relevant Problems,” Vol.13, No.3 1985.

2. Slower response/recovery time than batons
3. Sharp edges that can cut a person
4. Excessive weight and associated potential for causing serious injury or death if used for head strikes.⁵⁷

The use of flashlights whose tactical efficacy is effectively untested and unregulated cannot provide for the consistent and effective protection of DPD personnel. A properly designed baton is likely to provide considerably more protection than a flashlight when used as an improvised club. Moreover, the use of a device whose capacity for the infliction of injury is effectively unregulated represents a potential source of avoidable injuries to civilians and possible exposure to Denver for civil liability. Accordingly, **we recommend that the DPD adopt the position that head strikes with a flashlight be prohibited, absent exceptional circumstances, and only when deadly force would otherwise be permitted.**

Moreover, the DPD should review its force training to discourage the use of flashlights to strike suspects. **Better yet, given the wide availability of much lighter and smaller flashlights that provide the same or better illumination and coverage as the heavier ones, and given further that these smaller flashlights cannot be used as impact weapons, the wisest course may be that the DPD switch to the lighter, smaller models, and we so recommend.** Following the beating with a heavy flashlight of a car theft suspect, the LAPD adopted a policy discouraging the use of flashlights as impact weapons.⁵⁸ Officers must avoid striking the head, neck, groin, spine, and kidneys. Permissible targets are limited to shins, knees, elbows and hands. In March 2007, the LAPD introduced a new smaller, lighter flashlight that cannot be used as an impact weapon.

⁵⁷ AELE (Americans for Effective Law Enforcement) Alert, *Use-of-Force Tactics and Non-Lethal Weaponry*, Issue 3, 1999 (Revised). It should be noted that this AELE publication identifies these characteristics as “weaknesses,” and does not state a position as to whether agencies should authorize flashlights for use as *impact weapons*.

⁵⁸ LAPD Manual, Vol.1, §570 (4th quarter, 2007).

B. Pistols

Pistols should not be used as impact weapons, either. The LASD, in a force training publication, cogently set forth why:

Deputies are discouraged from using the Beretta [pistol] as an impact weapon for the following reasons:

- (1) the inherent danger of an accidental discharge endangering the deputies and other bystanders and
- (2) the firearms also generally an ineffective impact weapon due to its construction and weight.

We recommend that the DPD adopt a similar policy.

C. Saps, blackjacks, and analogous impact weapons.

Another highly disfavored impact weapon is the sap or black jack. It causes serious debilitating head injuries and routinely knocks subjects unconscious. Denver appears to be the only major police department in the United States that continues to permit police officers to use saps as impact weapons. They have fallen out of use throughout California and elsewhere since the 1970s. They are widely seen as unacceptable, and the IACP National Law Enforcement Policy Center advocates that police departments "ban the use of several types of weapons. These include slapjacks, blackjacks, brass knuckles, nunchucks, fighting stars, and other martial arts weapons. In addition, police agencies should consider serious limitations on the use of the police flashlight as an impact weapon."⁵⁹

By still allowing saps or blackjacks, the DPD stands nearly alone. A 1994 study conducted by the Institute for Law and Justice (ILJ)—the most recent data available—shows that only 8.8 percent of municipal police forces still issue blackjacks to their officers. And in an ILJ survey of 228 police departments in cities with populations of 200,000 or greater, less than 1 percent indicated that they continue to issue blackjacks to their officers. San Diego banned the use of saps 30 years ago. Philadelphia banned them in the 1990s. California, like many other states, bans saps, and there is apparently no exemption for police officers:

⁵⁹"Use of Force: Concepts and Issues Paper," Revised February 2006, IACP National Law Enforcement Policy Center, p. 6.

California Penal Code §12020:

(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, ... or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

We recommend that the DPD address whether there is any convincing rationale for the use of this particularly injurious impact weapon and, if not, ban it.

XIV. Edged Weapons

The Denver Police Department, unlike many others, has a specific use of force policy about edged weapons. The policy appears to be in response to the Childs case:

Edged Weapons: When confronted by a suspect armed with a deadly weapon, including edged weapons, an officer should weigh the totality of the facts and circumstances of each situation. Practical considerations may include, but are not limited to, the proximity of the suspect to the officer(s) and other persons, how rapidly the circumstances are evolving, and the use of force options that *may* be necessary, appropriate, and available. Officers should recognize that, when reasonable to do so with safety to officers and other persons in the vicinity, disengagement, repositioning, cover, concealment, barriers, or retreat, although not required by law, *may* be a tactically preferable police response to a confrontation. The value of all human life should be appropriately weighed in the decision process. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.⁶⁰

We commend the Department for the sensible and reasonable way it has responded to the challenges presented by the Childs case. In so doing, the DPD took responsible subsequent remedial action in a timely manner. As painful and troubling as this incident

⁶⁰ §105.00 (4)(d)(3)

was for all concerned, and as politically charged was the atmosphere surrounding this case, the Chief of Police and Manager of Safety distinguished themselves by the appropriate steps they took to lessen the risk of such incidents recurring. A key step in that regard was to expand Critical Incident Training (CIT), a subject to which we now turn.

XX. CIT Training

Apparently also as a result of Childs, the DPD formulated a specific policy dealing with interactions between the police and mentally ill, developmentally disabled, or persons in crisis:

Requesting a CIT officer: Whenever an officer learns, through his or her observations or otherwise, that a person with whom the officer is dealing may be a mentally ill, developmentally disabled, or emotionally disturbed individual, the officer will, if time and circumstances reasonably permit and dictate, contact dispatch and request that a CIT officer respond to the scene. If time and circumstances reasonably permit, officers will use distance, time, verbal tactics, or other tactics, to de-escalate the situation when dealing with such persons. When a CIT officer arrives on the scene, he or she should be the primary officer responsible for coordinating negotiations with the mentally ill, developmentally disabled, or emotionally disturbed individual unless determined otherwise by the CIT officer or a superior officer.

This policy should be emulated by law enforcement agencies across the country. Far too often, police confrontations with such individuals will end in avoidable and unnecessary tragedy.

Nearly all law enforcement agencies in the United States need to change their approach to incidents involving persons who are mentally disturbed, under the influence of drugs or alcohol, in crisis, or simply uncooperative. Too often, law enforcement rushes things or exacerbates the volatility of persons in an overly excited state, driving them to even higher states of agitation, rather than waiting for them to calm down or come off of the effects of alcohol or drugs.

Denver's CIT program is particularly well conceived. We reviewed with care the training materials and videotapes prepared by CIT and found them uniformly excellent. Officers who absorbed the material presented could easily pass a college-level course in abnormal psychology. The DPD has done a remarkable job training its officers. As of November 2007, 680 Denver police officers have received CIT training. We commend Leigh Sinclair and the staff at CIT for their extraordinary contribution to Denver.

XXI. Inherent Tension in Police Use of Force Training

Throughout American police training, there is an inherent tension between a stress on officer safety and the necessity under community-oriented policing to engage the community at all levels. The DPD's training materials are no exception. If anything, they err in an overemphasis on wariness and suspiciousness. The most jarring example is the following:

The PowerPoint presentation on Officer Survival for recruit classes lists common characteristics of officers who were slain in the line of duty. These include:
Friendly to everyone, well-liked by the community, hardworking, tended to use less force than other officers, tend to perceive themselves as more public relations oriented than law enforcement and used force only as a last resort.

Leaving aside the highly dubious empirical validity of the statement, the message this sends to recruits about what type of officers they should not be if they want to stay alive is quite clear: friendly, engaged with the community, and restrained in the use of force. **We recommend that this element of Officer Survival training be eliminated.** While officer safety is important in a profession that can be dangerous, the warmer and better engaged are the relationships between the police and the community, the safer the police officer will be on the street. Officers must understand that in most situations, the officers are doing their job in the context of a law-abiding community of people and not a war zone. **The DPD training should explicitly state and discuss the foregoing community policing concepts.**

CONCLUSION

In the main, the DPD's use of force policies and training materials that accompany them meet or exceed prevailing national standards. In many instances, DPD's policies distill and incorporate best practices in American policing. The DPD is quick to react to evolving circumstances in law enforcement and fashion policy and training to meet them. The DPD, in its policies and training on force issues, appears open and receptive to progressive ideas.

This Chapter has pointed out where, in our opinion, the DPD could take further steps and make improvements in policy and training on use of force issues. They should be taken in the spirit in which they were intended—to make one of the nation's finest even better. The next chapters, based upon an exhaustive review of shootings involving the DPD, will shed light on how well the policies and training are translated into performance on Denver's streets.

Summary of Recommendations

General use of force policies.

1. **Broaden the text in the use of force policy to include the Constitutional right of each individual to be free from all forms of excessive force. This might be accomplished simply by adding a phrase to the end of the sentence as follows:**

The Denver Police Department recognizes the value of all human life and is committed to respecting human rights, the dignity of every individual, and the Constitutional right to be free from excessive force, whether deadly or not. An officer shall use only that degree of force necessary and reasonable under the circumstances.

2. **Redefine the definition of force to state in substance:**

Deadly and seriously injurious force. The use of deadly and highly injurious force is the most consequential act in which a law enforcement officer will engage.⁶¹ Any use of such force shall be

⁶¹ Derived from Philadelphia Police Department, Directive 10 (January 2001) and Los Angeles Police Department Manual of Policy and Procedure, Vol. 1, §556 (2002).

circumscribed by the Constitutions and laws of the United States and the State of Colorado, this use of force policy, and all other relevant Denver Police Department policies, practices, and training.⁶² As in all police matters, officers should strive to exercise good judgment and act in an ethical manner.

3. **Revise the definition of deadly force to state in substance:**

Deadly force is that degree of force, the intended, natural, and expected consequence of which, or the misapplication of which, is likely to produce death or serious bodily injury.⁶³ Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives would be clearly ineffective, or other exigent circumstances exist.

4. **Consolidate and make consistent the circumstances under which an officer may use deadly force.**

5. **Adopt the Justice Department or Washington, DC Metropolitan Police Department standards which would bring Denver in line with federal law enforcement agencies and other cities which have adopted rules requiring the threat justifying the use of deadly force be "imminent." Alternatively, adopt the formulation used by the LAPD.**

6. **Adopt the specific language of *Graham v. Conner* in place of the current definition of "reasonable belief" as follows:**

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. The reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances

⁶² In some respects Denver's use of force policies are more restrictive than the law demands, and laudably so. This language is intended to acknowledge that fact.

⁶³ Derived in part from Washington, DC Metropolitan Police Department General Order 901.07 at 2 (2002).

confronting them, without regard to their underlying intent or motivation.

- 7. Revise the five scenarios set forth at §105.00(4) and elsewhere in the Manual and training materials. Rephrase the first scenario as follows:**

The more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

- 8. Revise the second scenario concerning active resistance to the following language or its equivalent:**

An objectively reasonable and necessary response to active resistance may require more force than is necessary to counter defensive resistance, and a response to aggressive active resistance may require more force than is necessary to counter active resistance. The objective reasonableness of force requires consideration of the totality of the circumstances.

When time, circumstances, and safety permit, there may be alternatives to using force even if the force is proportional to the level of resistance. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.

- 9. Eliminate the third, fourth, and fifth scenarios.**
- 10. Consolidate statements about community expectations and reasonable force by stating in substance:**

The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same. The level of force applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is

necessary and within the range of “objectively reasonable” options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed.

11. Adopt the following or similar language regarding drawing or exhibiting firearms :

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer’s alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. The drawing or displaying of a weapon is use of force and should be reported and tracked as such.

Tasers.

12. Revise §105.02 (4)(5) (2) to provide :

The Taser may be used in situations where it is reasonably necessary to prevent an officer or a third person from an imminent threat of death or serious bodily injury.

13. Amend Taser training materials to require that "active aggression" is minimally required to justify use of the Taser.

14. Expand the circumstances under which a Taser is prohibited to include:

The Taser will not be used:

- 1. when the officer knows a subject has come in contact with flammable liquids or is in a flammable atmosphere;**
- 2. when the subject is in a position where a fall may cause substantial injury or death;**
- 3. punitively for purposes of coercion, or in an unjustified manner;**
- 4. when a prisoner is handcuffed;**
- 5. to escort or jab individuals;**
- 6. to awaken unconscious or intoxicated individuals; or**
- 7. when the subject is visibly pregnant, unless deadly force is the only other option.**

The TASER® should not be used in the following circumstances (unless there are compelling reasons to do so which can be clearly articulated):

- 1. when the subject is operating a motor vehicle;**
- 2. when the subject is holding a firearm;**
- 3. when the subject is at the extremes of age or physically disabled;**
or
- 4. in a situation where deadly force is clearly justifiable unless another officer is present and capable of providing deadly force to protect the officers and/or civilians as necessary.**

Expand the list of vulnerable persons to include, among others, the disabled, juveniles, people with known or suspected heart problems or neuromuscular disorders such as muscular sclerosis, muscular dystrophy, or epilepsy.

15. Limit the use of the Taser in drive stun mode as follows:

Use of the “Drive Stun” is discouraged except in situations where the “probe” deployment is not possible and the immediate application of the “Drive Stun” will bring a subject displaying active, aggressive or aggravated aggressive resistance safely under control. Multiple “Drive Stuns” are discouraged and must be justified and articulated on the Use of Force form. If initial application is ineffective, officer will reassess situation and consider other available options. Mild resistance— such as bracing oneself or squirming—shall not constitute "active resistance" for purposes of applying the Taser in drive stun mode.

16. Add to its Taser policy on warnings that the DPD shall give:

The subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to comply unless doing so would subject any person to the risk of serious bodily injury or death. In the training materials, it is recommended that the Taser officer shout "Taser, Taser, Taser!" for the benefit of the suspect and other officers. This latter point should be incorporated in policy.

17. Revise its Taser policy regarding multiple discharges to provide in substance:

When activating a Taser, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard

cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody. Training should include recognizing the limitations of CED activation and bring prepared to transition to other force options as needed.

18. Revise its Taser policy to provide that:

The display of the Taser be prohibited unless the officer has an objectively reasonable belief that the discharge of the Taser is imminent.

Foot Pursuits.

19. Convert the training bulletin on foot pursuits to policy and adopt the IACP model policy as follows:

Guidelines and Restrictions

- 1. The pursuing officer shall terminate a pursuit if so instructed by a supervisor.**
- 2. Unless there are exigent circumstances such as an immediate threat to the safety of other officers or civilians, officers shall not engage in or continue a foot pursuit under the following conditions:**
 - a. If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension.**
 - b. If the officer becomes aware of any unanticipated circumstances that substantially increases the risk to public safety inherent in the pursuit.**
 - c. While acting alone. If exigent circumstances warrant, the lone officer shall keep the suspect in sight from a safe distance and coordinating containment.**
 - d. Into buildings, structures, confined spaces, or into wooded or otherwise isolated areas without sufficient backup and containment of the area. The primary officer shall stand by, radio his or her location, and await the arrival of officers to establish a containment perimeter. At this point, incident shall be considered a barricaded or otherwise noncompliant suspect, and officers shall consider using specialized units such as SWAT, crisis response team, aerial support, or police canines.**
 - e. If the officer loses possession of his firearm.**
 - f. If the suspect's identity is established or other information exists that allows for the suspect's probable apprehension at a later time and there is no immediate threat to the public or police officers.**
 - g. If the suspect's location is no longer known.**

- h. If primary officers lose communications with EOC or communication with backup officers is interrupted.
- i. If an officer or third party is injured during the pursuit who requires immediate assistance and there are no other police or medical personnel able to render assistance.
- j. If the officer loses visual contact with the suspect.
- k. If the officer is unsure of his or her own location or direction of travel.

20. The DPD should produce its own video on foot pursuits.

Canines.

21. Consider amending canine policy regarding announcements to require:

1. The announcement should be made by amplification or public address system whenever possible.
2. If significant time passes between the warning and deployment of the dog, the warning should be repeated.
3. Sufficient time should be afforded before release of the dog to permit third parties and bystanders to leave the area.

22. Revise policy to require advance approval to dispense with an announcement:

A recommendation to not make a canine deployment announcement must be approved by the ranking Department supervisor in command at the scene of the incident. A decision not to make a deployment announcement should be made by a lieutenant or higher. When conducting area searches for suspects believed to be armed, concerns for the safety of search personnel may dictate that an announcement not be made. In these instances, the canine handler will advise the on-scene supervisor of the reasons for precluding an announcement and abide by subsequent direction. Individual handlers shall articulate the justification for not making canine announcements.

23. Revise canine policy to provide:

Searches for felony suspects, or armed misdemeanor suspects, who are wanted for serious crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine. Searches for suspects wanted for Grand Theft Auto shall be limited to those who are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle. Known passengers, absent extenuating circumstances, should not be searched for with the use of a police service dog. Canines should not be used to

apprehend anyone suspected to be under the influence of drugs or alcohol if no other crime is involved, nor the mentally disturbed if no other crime is involved.

24. Limit off lead searches to:

commercial buildings or instances in which the suspect is wanted for an offense of violence or reasonably is suspected to have a weapon.

25. Amend policy to provide for quick release of a bite in the following or equivalent language:

In keeping with the [Department's] use of force policy, wherein we are mandated to use only the level and amount of force necessary to overcome resistance, the following direction relating to the use of [Department] canines will be adhered to by all handlers. In situations where a ... canine finds or bites a suspect, the concerned handler will as rapidly as possible assess the need for their canine to contain or seize the suspect. At the first possible moment that it is determined that the suspect is not carrying a weapon, the canine will be called off. This will be accomplished without delay. Handlers will factor into their call-off decision the fact that the average person will struggle if being seized by a canine. This struggling, alone, will not be cause for not calling off the canine.

26. Regularly test DPD handlers in real-life scenarios on their ability to control the dogs on leash and off leash; to obtain immediate compliance when the dog is ordered to release a bite or to proceed to bite; and test whether the dog can bark and hold without biting.

Shooting at Motor Vehicles.

27. Adopt the following or equivalent language regarding shooting at motor vehicles:

- A Department member shall not discharge a firearm at a motor vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the member has an objectively reasonable belief that:
- The vehicle or suspect poses an immediate threat of death or serious physical injury to the Department member or another person, AND
- the Department member has no reasonable alternative course of action to prevent the death or serious physical injury.

An officer threatened by an oncoming vehicle shall move out of its path,

if at all possible, instead of discharging a firearm at it or any of its occupants.

Flashlights.

28. Amend use of force policy to provide:

head strikes with a flashlight be prohibited, absent exceptional circumstances, and only when deadly force would otherwise be permitted.

29. Switch to lighter and smaller flashlights that provide the same or better illumination and coverage as the heavier ones but which cannot be used as impact weapons.

Pistols.

30. Adopt the following or equivalent language regarding use of pistols as impact weapons:

Officers are strongly discouraged from using a pistol as an impact weapon for the following reasons:

(1) the inherent danger of an accidental discharge endangering the officers and other bystanders and

(2) the firearm is also generally an ineffective impact weapon due to its construction and weight.

Saps, Blackjacks, and analogous weapons.

31. Address whether there is any convincing rationale for the use of these particularly injurious impact weapons and, if not, ban them.

Officer Survival Training.

32. Eliminate from Officer Survival Training any implication that an officer engaged in community policing is putting himself or herself at a greater risk of death. Teach community oriented policing values.

CHAPTER 2

INVESTIGATION PROCEDURES

INTRODUCTION

The importance of conducting thorough, impartial investigations of officer-involved shootings and in-custody deaths is difficult to overstate. In discussing investigations of officer-involved shootings, the International Association of Chiefs of Police (IACP) observed:

[A] law enforcement agency's reputation within the community and the credibility of its personnel are . . . largely dependent upon the degree of professionalism and impartiality that the agency can bring to such investigations. Superficial or cursory investigations of officer-involved shootings in general and particularly in instances where citizens are wounded or killed can have a devastating impact on the professional integrity and credibility of an entire law enforcement agency.⁶⁴

In short, an agency must rigorously investigate the conduct of its officers and do so without even the appearance of impropriety. One of the principal aims of our review is to assess whether the Denver Police Department met these challenges for the time period we examined (1999 to 2003) and whether the DPD is equipped to do so in the future. In this chapter, we discuss the DPD's investigation policies and procedures, both then and now, and whether, and to what extent, DPD investigators carried out their duties with the necessary professionalism and impartiality in the 25 files we reviewed.

We found that the DPD policies and procedures for investigating the criminal homicide issues relating to officer-involved shootings were consistent with and, in some respects, exceeded national standards. Although the policies and procedures were excellent, the criminal investigations themselves were not.

In the 1999 to 2003 cases we reviewed, criminal investigations were erratic in thoroughly and fairly establishing the facts required for a competent criminal homicide investigation.

⁶⁴ IACP National Law Enforcement Policy Center, *Investigation of Officer Involved Shootings: Concepts and Issues Paper* (August 1999).

In some instances the investigative work was superb. But, in too many instances, it was sloppy and half-hearted, both in the gathering of physical evidence and in interviews of witnesses. We further noted that, on average, the investigations where the suspect was not wounded or killed—which meant that they were investigations where the District Attorney’s office was not involved—were markedly less thorough and probing and did not reflect a fair and accurate understanding of what had occurred. We believe that structural changes that have occurred since 2003—most particularly, the establishment of and the role played by the Office of the Independent Monitor—have greatly ameliorated these quality deficiencies, but without examining current files, we are unable to provide any definitive judgments on this point.

Additionally, in the applicable time period, the DPD policies and procedures did not appropriately provide for the essential additional inquiries concerning administrative and tactical issues that occur in officer-involved shootings; nor in practice did the Department generally examine those issues. Since 2005, the DPD has taken commendable steps to ensure that officer-involved shooting investigations include the examination of such essential administrative and tactical issues, but we have concerns as to whether those reforms may need further improvement.

I. Investigative Framework

The traditional way that police departments, until about 20 years ago, investigated officer-involved shootings was to have their Homicide detective units conduct an investigation as to whether the police shooting violated the criminal law of the particular jurisdiction. The results of the investigation were provided to the local prosecutor who with or without a grand jury (depending on the jurisdiction) would determine whether to file criminal charges against the officer. In all but rare instances, prosecutors or grand juries determine that the officer’s use of deadly force was justified under the criminal law and no charges are filed.

About two decades ago, larger police departments in the United States, such as the Denver Police Department, began to recognize that what has been termed the “Homicide-only” model of investigating officer-involved shootings was insufficient. That change stemmed from an understanding that whether or not a police shooting violated the criminal law was only one of the three perspectives that should be employed concerning such incidents. The other two essential perspectives that should be employed in the investigation of an officer-involved shooting are administrative—determining whether the officers violated the department's policies and procedures and therefore should be subject to discipline; and tactical—determining whether the involved officers followed their training and performed in a tactically sound way or whether the underlying policies or tactical training need to be changed.

Once departments recognized the need for administrative and tactical perspectives, as well as the criminal perspective, in officer-involved shooting investigations, they realized that the Homicide-only model was not sufficient. Homicide detectives are well-equipped to conduct a criminal investigation, yet traditionally they lack the training and perspective necessary to investigate officer-involved shootings from the administrative and tactical perspectives. The Homicide-only model no longer constitutes good practice, particularly for a department the size of the DPD.

Most departments that have moved from the Homicide-only model, including the DPD, have adopted what we term the “Internal Affairs overlay” model. In that model, Homicide remains responsible for controlling the crime scene, conducting the criminal investigation, and taking voluntary statements from the involved officers. To greater or lesser degrees, under the overlay model, Internal Affairs investigators conduct a parallel administrative investigation from the policy and tactical perspectives. Internal Affairs responds and has access to the scene of the shooting, subject to Homicide’s control.⁶⁵

⁶⁵ The other model used by a few departments is the “Specialist Team” model, in which a stand-alone group of specially trained officers investigates all aspects—criminal, administrative, and tactical—of an officer-involved shooting. Washington’s Metropolitan Police Department’s Force Investigations Team (FIT Team) is one such example. There are analogous teams in the LAPD and LASD.

In the more powerful versions of the model, Internal Affairs participates in Homicide’s interviews of civilian and officer witnesses. In the less powerful versions of the model, Internal Affairs simply receives the tapes and transcripts of interviews and other investigatory materials from Homicide after the fact. DPD has chosen a middle course, where Internal Affairs and the Office of the Independent Monitor watch the witness interviews over closed circuit television and can request Homicide to ask additional questions at the end of the interviews. In no overlay models, however, does Internal Affairs participate in the interviews of involved officers, because to do so would run the risk that the involved officers’ statements could be rendered inadmissible in a criminal proceeding.⁶⁶ Some departments— Phoenix is an example—solve this problem by conducting a second administrative interview under compulsion in which the Homicide or criminal investigators are excluded.

Despite having adopted an Internal Affairs overlay model, Department policy still reflects the former Homicide-only policy. Manual §105.03(5) (rev. 3-06) provides as follows with respect to shootings which result in a death or injury (“hit” shootings):

The investigation of a shooting by a peace officer will be a cooperative endeavor between the Denver Police Department and the Denver District Attorney’s Office. The investigation will be under the command of the Division Chief of Investigations or his designee. All normal and appropriate investigative techniques will be used including, but not limited to the following:

* * *

d. The Internal Affairs Bureau will participate only at the request of the Division Chief of Investigations, his designee or the Chief of Police. This participation only involves those cases where a crime or serious rule violation is suspected.

Manual §105.04(8) (rev. 7-06) makes similar provisions for shootings which do not result in a death or injury (“non-hit” shootings). The notable differences are that the District Attorney’s office is not involved in the investigation of non-hit shootings, the officer’s

⁶⁶ In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the United States Supreme Court ruled that when a government employer directs an employee to answer questions or else be terminated, the statement cannot be used in a criminal proceeding because it was taken in violation of the employee’s right against self-incrimination.

commander can request Internal Affairs involvement, and the suspected rule violation need not be “serious.”

We assume that the failure to amend the Manual when the Department began to have Internal Affairs conduct administrative investigations on all hit and non-hit shootings was an oversight. In any event, **we recommend that the DPD update its Operations Manual to fully reflect the fact that Internal Affairs is charged with investigating officer-involved shootings from the administrative and tactical perspectives.**

We are more concerned with the scope of the Internal Affairs investigation.

Internal Affairs and the Office of the Independent Monitor respond, or “roll out,” to the scene of shootings. Their access to the scene is controlled by Homicide and they are prohibited from entering areas where access is procured by search warrant. Nonetheless, based upon what we learned through our interviews, Internal Affairs and the Monitor acquire the familiarity with the scene necessary to inform and assist their investigation and review thereof. They are also in a position to make suggestions to Homicide about the processing of the scene, if they believe such suggestions might be helpful. Internal Affairs’ role at the scene thus seems sufficient.

Internal Affairs and the Monitor watch over closed circuit television the videotaped interviews conducted several hours after the shooting incident by Homicide. Videotaped interviews are conducted of the involved officers and such of the witnesses, both officer and civilian, as Homicide determines are important to the investigation. Since Internal Affairs and the Monitor became involved in the process, Homicide and the District Attorney’s office address policy and tactics issues to a much greater degree than they had previously.

Before the interviews are concluded Homicide takes a brief break to consult with Internal Affairs and the Monitor to determine whether they want any additional questions asked. Internal Affairs and the Monitor often do ask questions, but generally to clarify the facts

rather than to delve into policy or tactical questions. Homicide generally will ask at least some version of the questions requested by Internal Affairs or the Monitor.

When watching the videotaping of the interviews, Internal Affairs and the Monitor do not have access to the written statements or reports that Homicide obtains from all the officer and civilian witnesses (but not the involved officers). Copies of those written statements could easily be provided to Internal Affairs and the Monitor and would provide several benefits. Internal Affairs and the Monitor could determine whether they thought it was important to interview on tape one or more of the witnesses whom Homicide did not think it was necessary to interview on videotape. The Monitor and Internal Affairs could make a request that those witnesses receive a full taped interview. Internal Affairs and the Monitor would also be able to determine whether there were inconsistencies or issues raised in the written reports that they wanted addressed in the videotaped interviews. **We recommend that Internal Affairs and the Monitor be provided with copies of all written reports and statements as soon as possible after they are completed and, to the extent feasible, before the videotaped interviews begin.**

After monitoring the videotaped interviews that generally take place within hours of the shooting, Internal Affairs waits to receive the completed Homicide investigation—a process that can take several weeks or even months. After receiving the Homicide file, Internal Affairs and the Independent Monitor review the file and then discuss their views of the policy and tactical issues and whether they believe that additional investigation or interviews are desirable. In most cases, Internal Affairs and the Monitor decide that additional interviews or re-interviews are not necessary, finding that the Homicide investigation provides sufficient information to complete the administrative investigation and subsequent review by the Use of Force Review Board (a process discussed in Chapter 3). If Internal Affairs, with the advice of the Monitor, decides that additional investigation or interviews are desirable, they are conducted promptly. Once the Internal Affairs investigation has been concluded—which in most cases is a decision to adopt the Homicide investigation—the case is scheduled for the Use of Force Review Board.

That Internal Affairs waits to start its administrative investigation until what is typically weeks or months after the incident prejudices any investigation that is necessary because the facts are now cold and witnesses' memories may have dimmed. **We recommend that Internal Affairs commence its investigation of policy and tactics immediately after the shooting, without waiting for the completed Homicide investigation.**

Homicide should, however, turn over to Internal Affairs its reports and other information as they become available.

We are particularly concerned that Internal Affairs in most cases does not conduct any interviews, including no re-interview of the shooter. Because except in the rarest of circumstances there was no administrative investigation in officer-involved shooting cases before 2005, only one of the 25 cases we reviewed included an Internal Affairs investigation. But in that case the excellent re-interview of the involved officer added measurably to the administrative investigation. Topics that had not been dealt with by Homicide were raised, and topics that had been raised in the criminal investigation were re-examined in commendable detail. While many cases raise comparatively few policy and tactical issues, our experience is that a re-interview of the involved officer always sheds additional light on the pertinent issues.

It is a usual practice to recommend that Internal Affairs always re-interview any officers who have fired their weapons and that it carefully consider whether any other witnesses should be re-interviewed, or in many instances (as Homicide conducts videotaped interviews of only a minority of witnesses), fully interviewed for the first time. The recommended practice would be consistent with the policy of the Internal Affairs Bureau of the Los Angeles County Sheriff's Department, which conducts written reviews of all shootings and selected significant force incidents for an Executive Force Review Committee. That policy requires that involved officers be re-interviewed, except in rare cases, and that new or additional interviews of other witnesses be conducted whenever it is necessary. A copy of that policy is in the Appendix.

We depart from our usual practice here because the DPD, unlike any other law enforcement agency of which we are aware, permits Internal Affairs and the Independent Monitor to observe Homicide's interview of the involved officer. The Independent Monitor is allowed to submit questions at the conclusion the Homicide interview, and Homicide nearly always complies. It is the belief of the Independent Monitor that this practice generally obviates the necessity of a re-interview. We acknowledge that current practice is working well, although we also note that it is dependent on the currently cooperative attitudes of the current players. If that situation should change, we would without hesitation recommend mandatory re-interviews.

II. Crime Scene Preservation and Evidence Collection

As with any investigation, the primary function of the crime scene investigator or evidence recovery technician involves the documentation and the collection of physical evidence. Because eyewitness accounts can be imperfect or biased, an investigation may turn largely, or even exclusively, upon physical evidence collected and reported by investigators.

Our ability to analyze Homicide's investigative work is limited in some regards: We were not at the scene of any of the 25 cases we reviewed and thus could not see firsthand how Homicide and DPD criminalists processed the crime scene or dealt with witnesses. We were further limited because there were no scene videos in 13 of the 25 cases. We do not know whether videos of the scene were taken in those 13 cases, but then not included in the file. Even if those videos were filmed, the failure to include them in the file for the Firearms Discharge Review Board (see Chapter 3) and for subsequent reviews undercuts the quality and integrity of the investigation.

In several cases there was a scene video, but an inadequate one. In one case there was a video of an arson crime scene taken before the officer-involved shooting occurred in the same location two hours later. In a second case, the video, which contains five unexplained breaks, missed filming a number of important pieces of evidence and the

videographer described the windshield of the suspect's vehicle as having two bullet holes, when it had three.⁶⁷

A different type of video was missing in a case that occurred in a downtown location where a number of adjacent buildings may have had surveillance cameras that captured at least part of the pursuit and shooting incident. No canvass was made, however, of those buildings to determine whether they had relevant footage.

In several cases, some of the most significant evidence came from civilians who saw the incident from a variety of vantage points with varying quality of sight lines. Photographs of the scene of the shooting from the vantage points from which the witnesses saw it would have shown what the witnesses physically could and could not have seen and would have enhanced the understanding of what occurred. But such point-of-view photographs were not taken; neither was there any explanation for the failure to do so.

Overall, Homicide appeared to do a good job at maintaining the integrity of the crime scene. Investigators demonstrated a full understanding of setting up inner and outer perimeters, controlling access to the scene, and organizing the collection of physical evidence and witness testimony. In one case, however, the scene video documents eight individuals, several of them apparently civilians, milling around a patrol car and the suspect's truck, following a shooting that concluded a vehicle pursuit. At one point a person who appears to be a civilian is seen walking close to the truck and looking at something on the ground.

A time-honored maxim among crime scene investigators is that there is only one chance to search the scene properly. If evidence is missed the first time around, its value can drop considerably due to the possibility that it was moved or contaminated after the investigators left the scene. Our discussion of the DPD's evidence collection is informed in part by certain basic principles articulated by the FBI:

⁶⁷ In most of these instances, however, the crime scene photographs adequately documented the evidence.

- The best [crime scene] search options are typically the most difficult and time-consuming.
- Physical evidence cannot be over documented.
- *There is only one chance to search the scene properly.*
- There are two search approaches: [1] Conduct a cautious search of visible areas, avoiding evidence loss or contamination; and [2] [a]fter the cautious search, conduct a vigorous search of concealed areas.⁶⁸

While the DPD often did a fine job following these principles, there were a number of cases in which evidence was not located, identified, or documented. For example:

- In a shooting that involved 50 shots in a level paved parking lot, only 41 shell casings were recovered in the initial processing of the scene and none of the missing nine casings were found in subsequent inspections. Yet a television reporter at the scene was filmed holding a shell casing that an unidentified civilian had provided him (and he returned to the man after his broadcast). In several other cases, officers' shell casings were not recovered and there is no indication that further inspections of the scene were ever conducted.
- In an incident that began with the suspect firing a shot (according to him, in the air), no casing was recovered anywhere near where the suspect was located at that point. The investigation failed to mention that fact. In the same case, one of the officer's four casings was recovered on a sidewalk approximately 25 feet from both the other three casings and from the porch where the officer said that he fired all four of his shots. No effort was made to determine how the casing got to the sidewalk, nor whether the officer fired his fourth shot from an entirely different location than he described.

⁶⁸ U.S. Department of Justice, Federal Bureau of Investigation, *Handbook of Forensic Services: Crime Scene Search*, 172 (2007) (emphasis added).

- In one case involving a shooting by two officers, one was using a 9mm handgun and the other a .45 caliber gun. Physical evidence regarding the recovery of bullets and fragments thereof would have been useful in determining the positioning of each of the officers as they fired their 15 rounds. Some recovered rounds were shown in the crime scene video and photos, but were not mentioned in the investigative reports. A report refers to the recovery of “several bullets and bullet fragments” without specifying exactly how many bullets or how many fragments, what their caliber was, and exactly where they were found. Some of the bullets and fragments that were found were not marked with evidence placards.

By contrast, in one case that was very thoroughly investigated, a superior officer from Homicide returned to the scene several weeks after the shooting and prepared a detailed and informative analysis of the crime scene. On the other hand, another investigation did not even accurately count the number of children who were in a house where an officer-involved shooting took place.

Gunshot residue (GSR) evidence is widely used by law enforcement agencies across the country to help establish or confirm a person or object’s proximity to a discharged firearm. Unburned gunpowder and soot expelled from the muzzle of the gun (“muzzle GSR”) can be collected from various surfaces (*e.g.*, clothing, skin, hair, or hard surfaces such as doors or walls) and analyzed to help establish the distance and angle between the surface and the gun when it was fired. In addition, particles of primer, the compound that first ignites when a gun is fired, is often deposited upon the hands and clothing of the person who fired the weapon. These particles (“primer GSR”) are typically collected by detectives or criminalists at the earliest opportunity after a shooting has occurred, and before the suspected shooter’s hands have been wiped clean. By regularly attempting to collect muzzle and primer GSR in firearms-related cases, investigators can enhance their ability to establish or corroborate which persons fired a weapon and where they were positioned when they fired.

The Department of Justice has taken the position that GSR analysis should be a standard part of officer-involved shooting investigations. For example, the April 2002 settlement agreement between the Justice Department and the City of Cincinnati expressly requires the Police Department to “conduct all appropriate ballistic or crime scene analyses, including *gunshot residue* or bullet trajectory tests.”⁶⁹

We found that the DPD was erratic in its use of GSR. In some cases it was used to the fullest extent possible, showing the investigators and lab technicians at their thorough best. In others, despite the need for the information GSR would provide, it was not employed (and the reasons for not doing so were never explained). Examples of both the exemplary use of GSR and the problematic failure to do so follow:

- In a case where the suspect sustained 13 wounds inflicted at fairly close range, the DPD commendably tested 14 areas of the deceased suspect’s sweatshirt and thus were able to show that all the bullets that penetrated the sweatshirt were fired at a distance of more than four feet.
- In the most thoroughly investigated and documented case we reviewed, GSR tests were performed on all of the suspect’s clothing. The negative results ruled out that any of the shots had been fired at very close range.
- On the other hand, in a case where the distance between the officer and the knife-carrying suspect at the time of the shooting was at issue, no GSR test on the suspect’s clothing was performed and no explanation for the failure to do so was found in the file.
- In a case where the suspect’s hands were swabbed for GSR, no test results were included in the file.

The DPD clearly has the knowledge and expertise to thoroughly collect and document physical evidence relating to officer-involved shootings. Generally Homicide performed these functions well, but we did find that consistency in meeting standards in this area

⁶⁹ Memorandum of Agreement between Department of Justice and City of Cincinnati, ¶ 32 (April 12, 2002) (emphasis added).

was lacking. **We recommend that the DPD consistently use its skill and expertise in locating, collecting, documenting, and testing physical evidence.**

III. Interviews of Witnesses

Identifying and comprehensively interviewing witnesses is critical to an officer-involved shooting, as it is to any investigation. Interviews allow the investigators to hear firsthand what involved persons and witnesses saw, heard, thought, and did. Combining the information acquired during interviews with the physical evidence gathered provides investigators with the information for constructing a chronological narrative of what occurred during a given incident.

The quality of witness interviewing, including the witnesses who were not interviewed at all, is the investigative area that caused us the greatest concern. While we did see some excellent, thorough, probing, and fair investigations, they unfortunately were the exception rather than the rule. The excellent witness interviewing that we did see leaves us with no doubt of the training and talent of DPD's Homicide investigators. They are capable of performing up to national standards, or better, in every case. The fact that they did not consistently do so suggests to us that for one reason or another, thorough and probing officer-involved shootings investigations were not a priority for either the investigators or their supervisors.

As we noted earlier, the fact that administrative investigations are now conducted, the close involvement of the Independent Monitor in these cases, and the existence of a credible review process all point to important structural improvements that should produce the quality of investigation one would expect from a professional police department. The fact that non-hit shooting investigations were, in general, more superficial than hit shooting investigations suggests either that the involvement of the District Attorney's office in the latter, or the greater seriousness of the case when someone was wounded or killed, motivated the DPD detectives to conduct better investigations.

The problems with the investigations stemmed in part from the failure to address policy and tactical issues in most instances, no matter how glaring they were. But one cannot criticize the Homicide investigators for those problems because their responsibility was to determine whether a crime was committed. We saw cases, however, where there was an issue as to whether the use of deadly force was justified. Even when those issues arose, we found that the investigators often failed to develop the facts necessary to reach a conclusion on whether the deadly force was justified.

For instance, in one case, a knife-wielding man advanced on an officer. The officer fired approximately seven shots, all of which apparently hit the suspect. Those shots were clearly legally justified. The man fell to the floor, momentarily dropping the knife, and the officer who was about five feet away, ceased firing his weapon. When the man, lying on his side, reached for the knife, the officer fired two more shots, striking the subject, who then went limp. We know these facts from what the officer volunteered in his statement when he was asked what happened. We know nothing further because the facts relating to this part of the incident were not probed, indeed were referred to just glancingly, by the very experienced investigator. The officer was not asked whether he knew or believed that the suspect was already seriously wounded, how he perceived that the suspect was an immediate threat, whether that perception was reasonable, or why he could not without endangering himself or others have simply put some greater distance between the suspect and him, while keeping his gun trained on the suspect. He also should have been asked why he did not simply kick the knife out of the suspect's reach.

In a very similar case, two shell casings were found inside a room where the suspect collapsed and died. The officer said that he fired all his shots from a location outside that room. If the officer was correct, the casings could not have landed where they were found.⁷⁰ The investigators, however, did not ask any questions related to the anomalous positioning of the two shell casings or in any other way explore these facts.

⁷⁰ To be sure the casings could have been inadvertently kicked and ended up where they did. The fact that there were two casings in close proximity to each other makes that possibility quite unlikely.

We certainly do not maintain that either of these uses of deadly force was unjustified. They may well have been entirely justified. The problem is that, without developing the relevant facts, one cannot rule out the possibility that these shots were unjustified in one or both of these cases. It is the job of an investigator to nail down facts as much as possible so that theories of what happened can become more or less likely. When the investigators ignore the issues, they are failing to establish the facts.

In addition to ignoring obvious issues, the investigators often seemed to be simply going through the motions, knowing in advance that the officer-involved shooting would be ruled justifiable. Sometimes they did show considerable effort putting together a case against the suspect, while leaving questions open if they did not serve that purpose.

In many cases, the investigators chose to interview only a small portion of the significant witnesses on videotape. For instance, in one case, only the two involved officers were interviewed. The other eight officers on the scene were not interviewed. In most cases supervisors who were involved in planning an action that resulted in a shooting were not interviewed. **We recommend that the DPD videotape an interview with all supervisors, police officers, and civilian witnesses who have significant knowledge about an officer-involved shooting incident.**

In one case we reviewed, one of the shooters was a superior officer, yet he was interviewed by an officer of subordinate rank. Such a practice raises the question whether the investigator would refrain from addressing problems in the superior officer's testimony or questionable actions by the superior officer out of deference to his superior rank. Currently, the practice is to have an officer of a higher rank sit in on or directly supervise the interview of a superior officer. **The recognized better practice—that we recommend the DPD adopt in a formal protocol—is to have all interviews of sworn personnel conducted by an officer of equivalent or higher rank.** Although Denver's current practice is a reasonable alternative, the more sweeping practice that we advocate eliminates more possibilities of a compromised interview.

One aspect of DPD procedure that calls for unmitigated commendation is the fact that they use videotaped interviews in every officer-involved shooting case. The DPD has been a national leader in videotaping statements since 1983. While national standards demand that statements in officer-involved shooting cases be taped, they do not demand videotaping. Observing the videos, however, demonstrates how superior they are to audiotaping.

The DPD could improve its videotaped interviews by describing the actions being illustrated by the witness. While the videotape often shows the demonstrated actions, there are times it does not, or does not do so clearly, because of the lighting in the interview room or because the witness moves in a way that the camera is not able to fully capture the actions being demonstrated. Moreover, many who will review the file will read the transcripts of taped interviews. Without a description of the witness's actions, the reader of the transcript is left in the dark as to what the person being interviewed demonstrated. Detectives undoubtedly are familiar with the need to describe demonstrated activity when audio taping. **They should also describe demonstrated actions when conducting videotaped interviews.**

The DPD also deserves commendation for the fact that it takes prompt voluntary statements from involved officers and has apparently done so in every officer-involved shooting case since 1979. Listening to and watching the involved officers' interviews is the best evidence we have seen to refute the arguments of some that officers (unlike all other witnesses to a violent event) are too traumatized by an officer-involved shooting to give a statement before several days have passed.

Moving an investigation forward without undue delay is a good thing but, as with all good things, too much of it can create problems. We saw problems in speed in two ways. First, some interviews were seemingly rushed, concluding in as few as 12 or 15 minutes. The investigators simply did not allow the time to complete a full and thorough interview.

The other way speed compromised quality is that the DPD almost always conducts simultaneous videotaped statements. Investigators divide up the witnesses, with interviews almost always being conducted by two different investigators, and sometimes three. In doing so, investigators are unaware of inconsistencies—sometimes very important inconsistencies—between different witnesses’ accounts. While more than one interviewer is necessary in cases with many witnesses, the DPD uses two investigators even when there are very few witnesses. For example, in the case where only the two involved officers were interviewed and none of the other eight who had been present was, the two officers were interviewed by separate investigators. In another case, the shooter and the officer he was trying to protect when he fired one shot at the suspect were interviewed by different investigators. The shooter stated that he tried to warn the other officer that the suspect had a “silver-tinted object” in her hand.⁷¹ The officer did not volunteer that he received that warning from the shooter, nor was he asked if the shooter had communicated anything to him. The discrepancies between the two officers were not noted in any of the reports related to the investigation.

We recommend that, to the extent feasible, one investigator conduct all the interviews in any given case. It will take longer, but the product should be better. When the number of witnesses is too great for one investigator to interview them within a reasonable time, or other exigencies exist (such as a civilian threatening to leave before being interviewed), one or more other investigators should conduct interviews, comparing notes with colleagues, to determine whether there are inconsistencies that should be pursued.

Aside from the problem of not addressing inconsistencies because only the other investigator knows about them, DPD investigators in the cases we reviewed paid scant attention to inconsistencies. They were not noted in investigative reports or statement summaries. Witnesses were not re-interviewed to clarify their accounts in light of what

⁷¹ The shooter did not communicate that he had seen a “silver-tinted object” to the dispatcher when communicating that he had fired a shot and that the suspect had fled the scene.

another witness had said. With a couple of notable exceptions, we saw no evidence that DPD investigators paid the slightest attention to inconsistencies. For example:

- Statements by two officers that they fired only after the suspect did (when the suspect in fact possessed a pipe that was incapable of firing or appearing to fire) were not probed despite the fact that the investigators knew they were erroneous.
- No effort was made to resolve the conflict between an officer who said that the suspect was very resistive and an observing civilian who said the suspect resisted only slightly, nor was the discrepancy noted in the relevant reports.
- Investigators did not try to resolve the conflict between the statement of an off-duty officer that he identified himself as a police officer before he got into a struggle with the two suspects—a critical issue in the case—when other witnesses denied that he identified himself.
- When the suspect alleged in two subsequent interviews that the officer knew that the suspect had discarded his knife before the officer shot and wounded him, detectives did not re-interview the officer to ask whether the suspect's allegation was truthful. The summary of the case adopts the officer's version of the events without even mentioning that the suspect provided a contrary version.

Regardless of the nature or severity of the inconsistencies in witnesses' accounts, Homicide detectives did not re-interview witnesses to try to resolve the discrepancies. **We recommend that investigators be required before they interview a witness to know what other witnesses have said on the same subject, and that they be required during interviews, unless there is a good reason not to, to address the inconsistencies. Investigators should also re-interview witnesses to try to resolve what the truth is, when to do so might be fruitful. Investigative reports should document material inconsistencies.**

The often cursory nature of the investigative efforts was demonstrated by the many witnesses who were not interviewed on videotape. For instance, unless a supervisor was involved in the shooting, Homicide did not interview supervisors, even when—as

occurred in at least four cases we reviewed—the supervisors clearly had information pertinent to the investigation. Homicide also did not interview paramedics on videotape in several cases where they had material information about the case.

In a case where there was only one witness to a shooting—a civilian who observed the entire chain of events—the witness was not interviewed on videotape and the written interview was brief and superficial. In another case where a civilian was struggling with the suspect both before and at the time the suspect was shot and killed by the police, the civilian was not interviewed on videotape and the written interviews left many questions unanswered. Finally, in a case where the shooter advanced a rationale for the shooting that was not corroborated by the other officers on the scene, no attempt was made to interview the suspect to see if she would or would not corroborate the officer.

In the cases we reviewed, when the DPD interviewed witnesses not on videotape, it rarely audiotaped the interviews. This omission does not comply with national standards and is surprising from a department that has been a trailblazer in recording statements on videotape. **We recommend that all interviews conducted in officer-involved shooting cases— including supervisors, officers and civilians—be either video or audio taped.**

The relevant issues that investigators did not raise in interviews were numerous and varied. For example:

- Investigators did not ask officers who lured a suspect back to a domestic violence victim's house what thought they had given to the safety of the women and children in the house, despite the officers allowing the suspect to enter the house while they hid nearby.
- Despite civilian witnesses indicating that they were in the backdrop when an officer fired five shots at the suspect, investigators did not ask the shooter about the backdrop.
- Investigators did not ask an officer who fired seven shots into the back of a house whether he considered harm to innocent occupants of the house.

- Officers who were engaged in a foot pursuit of a suspect believed likely to be armed were not asked whether they advised the backup officers they requested that the suspect might be armed. (Nor was there any recording in the file of the radio traffic or any mention of it in the file.)

The failure to address issues was not limited to questions not asked. In a case where an off-duty officer, who admitted that he had been drinking earlier in the evening, fired a shot to end an assault on him, the investigators did not test the officer's blood alcohol level.

In a number of cases investigators engaged in improper leading questions that were designed to suggest how the witness should respond. Such questioning not only undercuts the integrity of the interview, but raises uncertainty about the investigator's underlying motives or bias. Examples of improper leading questions include the following:

- After an officer stated that the suspect put his hand down apparently to shift his car, the officer was asked: “[H]is hand goes down, the car is still going—did you think he was trying to shift or did you think he might have been going for a weapon?” To his credit, the officer maintained his position that he believed the suspect was reaching for the gear shift.
- In the same case in questioning another officer, the following question and answer occurred:

[Q.] Okay. Did you observe this person driving this car in a way that you felt ... that there was a crash imminent or there was a collision imminent or that he could've run over somebody ... did you watch anything happen at a ... specific location that had circumstances just change[d] by a second or so he could've crashed or killed somebody?

[A.] Yes. I did.

- In another case, the investigator asked a civilian witness: “Based upon what the officers were doing and from your vantage point of, of you looking out this

window ... did it appear that the officers were trying to do their job?" The witnesses answered, "Yes."

- In a different case the investigator asked a civilian witness concerning the shooting officer, "... and you do feel she was threatened ...?" Despite the leading, the witness said he did not believe the officer was threatened.

While leading questions often suggest bias, a few—and only a very few—questions we saw in the cases we reviewed were overtly biased. For instance, rather than asking the seven officers who fired their weapons whether they had considered alternatives to the use of deadly force when the circumstances were such that alternatives were possible, the investigator asked the one officer who showed admirable restraint by holding his fire why he did not change his position so that he could fire as well. In another case, the investigator inappropriately allied himself with the shooter by stating: "Typically, in these situations, a lot of different things are going through an officer's mind. I mean, I've been involved in a shooting as well, an officer-involved shooting. When the shots were being fired, tell me a little about what was going through your head."

DPD investigators should identify, and conduct thorough, unbiased, and tape-recorded interviews of all witnesses—including supervisors and emergency medical personnel—in officer-involved shooting cases. Supervisors should carefully monitor the appropriateness and fairness of questions asked of such witnesses.

Finally, DPD officer-involved investigations would benefit by having a checklist of questions to ask involved and witness officers so that relevant facts about the officer's background, events that preceded the incident that led to the shooting, and the events of the incident are all fully developed. The Portland Police Bureau has developed such a checklist that covers necessary issues and circumstances well.⁷² **We recommend that the DPD develop an equivalent checklist.**

⁷² A copy of the Portland Police Bureau Checklist may be found in the Appendix.

IV. Presentation of Evidence

As part of our study, the DPD provided us with copies of the case files that had been presented to DPD officials for command level review. Thus, we saw what the Department executives had seen in the review process. Perhaps equally importantly, information not presented in our copies of the case files was also not presented to the executives, thus undercutting the integrity of the review process.

By and large, the officer-involved shooting files prepared by Homicide were well organized and easy to follow. They were inconsistent, however, in including certain materials that greatly facilitates effective, intelligent review of such cases. Many files lacked transcripts of some or all of the videotaped interviews. Other than the transcribing of all interviews in particularly controversial cases, there did not seem to be any clear pattern of which interviews were transcribed other than that officer interviews were more likely to be transcribed than civilian interviews. A few cases included transcripts of the radio traffic between dispatchers and officers and between officers involved in responding to the incident. Most cases did not include such transcripts, and most of the CDs of radio communications included only the communications between the dispatchers and officers in the field, but not the officer-to-officer communications. These frequent omissions from the files deprived reviewers of some of the most accurate and revealing evidence of what happened in the incidents we examined.

We recommend that all recorded interviews and all radio communications and 911 calls in officer-involved shooting cases be transcribed. Such transcripts greatly facilitate an effective review of incidents and makes much more likely that executive reviewers will have ready access to that evidence. Because of the time involved, reviewers are more likely to read transcripts than to listen to or watch tapes. Transcripts are also much more useful for re-checking specific facts and for reference during discussion of the case by the members of the review body. We acknowledge that transcribing the interviews is a costly and time-consuming exercise. Given the small

number of officer-involved shootings, we believe the cost is outweighed by the contribution of transcripts to the truth seeking process.

We also recommend that the officer-involved shooting investigations by IAD and reviews by the UFRB, where possibly relevant, include information on prior shootings by that officer, prior disciplinary history, training records, and documentation of the officer's last qualification. By and large, those records were not included in the investigatory files ⁷³ and the important information contained in them was apparently not available to the Homicide investigators or those involved in the review process.

A significant part of each file was the Supplementary⁷⁴ Report, which summarized the facts established by the investigation. An undated Training Bulletin, "Preparing the Supplemental Report," which is found at Tab 8 of the DPD's Officer Involved Incident Reference Manual, describes the report as follows (p. 1):

The purpose of the supplemental report is to provide documentation and a review of the investigation. The documentation portion is recording all of the pertinent facts and events of the investigation for later review

The supplementary reports we reviewed consistently failed to conform to the requirements of the Training Bulletin or to good practice in a variety of ways. They rarely made any effort to grapple with or resolve inconsistencies between witnesses' accounts or between the physical evidence and witnesses' accounts and the physical evidence. Moreover, the supplementary reports sometimes distorted the facts in ways that generally seemed to favor the conclusion that the officers had acted appropriately and in other instances omitted facts that would not reflect well upon the DPD or its personnel. For example:

⁷³ PARC had access to officers' training records when we made a request to have them added to the files the DPD provided us.

⁷⁴ The cases we reviewed referred to this report as a "Supplementary Report." A training bulletin on how to complete such reports calls it a "Supplemental Report."

- In several cases, the supplementary report adopted officers' versions of what occurred despite contrary accounts from other witnesses, without any discussion of why the contrary accounts were ignored or discounted.
- In one case, the supplementary report failed to note that two police bullets were among the 15 rounds that struck the 80-year-old deceased victim.
- In another case, the supplementary report did not note that the DPD member was in an outdoor location at night with little lighting and without a flashlight when he shot a woman whom he mistakenly thought had a gun.
- In yet another case, the supplementary report said that the suspect pointed his gun at the off-duty officer, when the officer in fact said that the suspect was just starting to pull a gun from his waistband.

The reports also did not attempt to make “notations of the investigation ... as they occur,” as called for by the Training Bulletin (p. 2). The failure to write balanced, thorough summary reports calls into question the fairness and thoroughness of the entire investigation. Particularly in the case of officer-involved shootings such practices call into question the integrity of the department and undermine public confidence in the agency. **We recommend that the DPD ensure that the summary reports in officer-involved shooting cases are complete and balanced in analyzing all the available evidence and in documenting the investigatory steps taken in the case. The DPD should require that the supplementary report identify all inconsistencies identified during the course of the investigation, as the Los Angeles Police Department requires for certain investigations.**⁷⁵ The current role of the Independent Monitor to ensure that thus summary reports are complete and balanced is an excellent doublecheck.

⁷⁵ See Los Angeles Police Department Manual of Policy and Procedure, Vol. 3 §794.37 (Force Investigation Division Investigative Guideline) (“Identify and document all inconsistencies in officer and witness interview statements.”)

Our recommendations are entirely consistent with the aspirations of the DPD's Training Bulletin, which urges the investigating detectives to compile thorough supplementary reports, as follows (p. 4):

This valuable report speaks not only to the ability, tenacity, and integrity of the detective; it also demonstrates the resolve and reputation of the Denver Police Department. It is therefore incumbent upon each investigator to complete and document a *thorough* criminal investigation. These completed files are reviewed by many and must verify the effort that went into the investigation. Detectives must remember that each supplemental report is a reflection on them and the Denver Police Department. [Emphasis added.]⁷⁶

The Training Bulletin and other efforts by the DPD in the past four years to improve practices hopefully are being reflected in the investigations of officer-involved shootings currently being conducted. These standards, however, were generally not being met in the 1999 to 2003 period we reviewed.

Summary of Recommendations.

Investigation Procedures

- 1. The DPD should update its Operations Manual to fully reflect the fact that Internal Affairs is charged with investigating officer-involved shootings from the administrative and tactical perspectives.**
- 2. Internal Affairs and the Monitor should be provided with copies of all written reports and statements as soon as possible after they are completed and, to the extent feasible, before the videotaped interviews begin.**
- 3. Internal Affairs should commence its investigation of policy and tactics issues immediately after the shooting, without waiting for the completed Homicide investigation.**

⁷⁶ We recommend that the Training Bulletin be updated to emphasize the need for fair and balanced reports, as well as thorough ones.

Crime Scene Preservation and Evidence Collection

- 4. The DPD should consistently use its skill and expertise in locating, collecting, documenting, and testing physical evidence.**

Interviews of Witnesses

- 5. The DPD should videotape or audiotape all interviews with supervisors, police officers, and civilian witnesses who have significant knowledge about an officer-involved shooting incident.**
- 6. To the extent feasible, one investigator should conduct all the interviews on one case.**
- 7. Investigators should be required before they interview a witness to know what other witnesses have said on the same subject, and that they be required during interviews, unless there is a good reason not to, to address the inconsistencies. Investigators should also re-interview witnesses to try to resolve what the truth is. Investigative reports should document material inconsistencies.**
- 8. The DPD should adopt a formal protocol to have all interviews of sworn personnel be conducted by an officer of equivalent or higher rank.**
- 9. To the extent feasible, one investigator should conduct all the interviews in any given case.**
- 10. DPD investigators should identify, and conduct thorough, unbiased, and tape-recorded interviews of all witnesses—including supervisors and**

emergency medical personnel—in officer-involved shooting cases.

Supervisors should carefully monitor the appropriateness and fairness of questions asked of such witnesses.

Presentation of Evidence

- 11. All recorded interviews and all radio communications and 911 calls in officer-involved shooting cases should be transcribed.**
- 12. Officer-involved shooting investigations should regularly include information on prior shootings by that officer, prior disciplinary history, training records, and documentation of the officer’s last qualification.**
- 13. The DPD must ensure that the summary reports in officer-involved shooting cases are complete and balanced in analyzing all the available evidence and in documenting the investigatory steps taken in the case. The DPD should require that the supplementary report identify all inconsistencies identified during the course of the investigation.**
- 14. Officer-involved shooting investigations by IAD and reviews by the UFRB as a rule include information on prior shootings by that officer, prior disciplinary history, training records, and documentation of the officer’s last qualification. A checklist should be developed for this purpose.**

CHAPTER 3

INTERNAL REVIEW

INTRODUCTION

Police agencies should review officer-involved shootings with two primary goals in mind. First, they must hold their officers accountable: After mastering all of the pertinent facts, they must carefully assess whether the involved officers and their supervisors and commanders have violated any agency policy or procedure or have acted in a manner inconsistent with their training. Second, they must use the incident as a learning tool: Those charged with reviewing the case must determine what lessons can be learned from the department's experience with critical incidents and should use those lessons to inform and improve the department's policies, procedures, training, and management. As a basic requirement for effective, respectful policing, a transparent, responsible, and fair review process engenders trust and cooperation from the community served by the agency, thereby enhancing officers' safety and raising the clearance rate for crimes, and leads to less frequent and more judicious uses of deadly force.

The U.S. Department of Justice has identified this two-pronged analysis as a standard for good practice:

An internal ... review should be conducted of all firearms discharges by officers ... and of any other use of deadly force. ...

The review should determine whether the firearms discharge or other use of deadly force: was within agency policy and reasonable and necessary, and if not, whether and what discipline should issue; indicates a need for additional training or counseling, or any other remedial measure for the involved officer; and suggests the advisability of revising or reformulating agency policy, strategy, tactics, or training.

To the extent possible, the review of use of force incidents and use of force reports should include an examination of the police tactics and precipitating events that led to the use of force, so that agencies can evaluate whether any revisions to training or practices are necessary.⁷⁷

⁷⁷ U.S. Department of Justice, *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies*, at 5 (2001).

I. DPD Review from 1999-2003

With the notable exception of two cases PARC reviewed, the DPD review process in effect from 1999 to 2003 (and until the process was significantly revamped in 2004 and 2005) was pro forma and not calculated to achieve either of the goals of meaningful internal review. Officer-involved shooting incidents were not carefully scrutinized by the now-defunct Firearms Discharge Review Board (FDRB), known as the “Shoot Board,” and, except in rare instances, resulted in “in-policy” findings after cursory proceedings. In virtually all of the 24⁷⁸ cases we reviewed and in general over many years, we were told by DPD personnel, the FDRB process did not hold officers accountable, nor did it provide lessons to the DPD from either the tactical successes or failures exhibited in scores of officer-involved shootings. As we will discuss, however, in the next section of this chapter, the present internal review process is a substantial improvement over the process employed during 1999 to 2003.

The FDRB was charged with examining all firearms discharges, other than at the range or in sporting activity, by DPD members. It determined whether shootings were consistent with Department policy and was empowered to make recommendations related to policy and training. The members of the Board were the four DPD Division Chiefs and commanding officer of the involved member. Manual former §105.05 (rev. 8-97).

Our review of the 24 1999-2003 cases heard by the FDRB showed that documentation of the activities of the FDRB was scant and the preservation of it was poor. While the Internal Affairs Bureau was charged with performing administrative functions for the FDRB, it did not even assign an identifying case number to the matters heard by the FDRB. Nor was such documentation as was created for the FDRB process made a part

⁷⁸ One of the 25 cases we reviewed involved a shooting in the City of Denver by officers from other police departments. The DPD investigated the case since the shooting occurred in its jurisdiction. But since no DPD officers fired any shots, the case was not subject to FDRB review. Thus, when we refer to the cases we reviewed in this and the following chapter, the operative number is 24, rather than 25.

of the Homicide case file. As a result, Internal Affairs had to conduct repeated searches to provide PARC with even fragmentary documentation concerning the 24 cases in our sample that the FDRB reviewed.

What we generally received on each of the 24 cases was one or sometimes two of the following documents: a FDRB agenda that included the conclusion reached by the Board, a memorandum from the commander of Internal Affairs to the Chief, and minutes of the proceedings. The body of the memos to the Chief we received stated in full:

The Firearms Discharge Review Board met on [date] to review the circumstances that led to this officer discharging his [or her] firearm.

After the review, the Board voted that this weapons discharge was justified and WITHIN THE POLICY AND PROCEDURE of the Denver Police Department.

Following a recitation of some procedural facts, the following discussion in the minutes is illustrative of the minutes we received generally:

Officer [Name] provided testimony to the Board concerning his actions of [sic] the date in question. The testimony followed closely, [sic] the videotaped statement made to the investigators on the date in question. Officer [Name] advised the Board that it was never his intention to become involved in a shooting on this day, or any other day he works, however, the actions of the suspect dictated his response, to insure his safety and the safety of the other officers on the scene. Officer [Name] reaffirmed to the Board, [sic] that he had no other choice but to fire his weapon in response to the suspects, [sic] wanton and reckless acts.

The Board excused Officer [Name] and after very little discussion, returned with a vote of 5 – 0, that this discharge of a firearm was **IN POLICY**.

Officer [Name] was returned to the Board, where the Board informed him of their decision, and also commended Officer [Name] for his reaction to a volatile situation.

Of the 24 cases in our sample that were reviewed by the FDRB, 22 were found to be in policy apparently by a unanimous vote, one was found to be in policy by a 3-2 vote (no information was provided concerning the concerns of the two dissenters), and one

resulted in an out-of-policy finding by a 4-1 vote. We found no evidence of any policy or training recommendations and were told that the FDRB generally did not make such recommendations.

In the one case we reviewed where the DPD most comprehensively analyzed the deficiencies in tactics that led to a shooting and did present that analysis to the FDRB, leading to the one out-of-policy finding we saw in our sample, the Board appropriately requested an Internal Affairs investigation to develop evidence on the policy and tactical issues in the case and, following FDRB review, the case was presented to the Disciplinary Review Board for a recommendation to the Chief of the appropriate discipline for the violation of policy. Even in this case, we did note some resistance in the Department to the idea of analyzing tactics and holding officers accountable for significant deviations from sound tactics and the principles taught in training.

A second case we reviewed was appropriately referred, after an in-policy finding on the shooting itself, to Internal Affairs for an investigation of the tactics employed. Internal Affairs conducted interviews of the two involved officers and six witness officers.⁷⁹ After a second hearing on the case, the FDRB determined that the two involved officers should be exonerated of employing poor tactics. While the FDRB records do not document a decision that the two involved officers should be required to receive supplemental tactical training, the two officers' training records state that the two officers did receive such training at the direction of the FDRB.

As a result of the paucity of documentary information, we have also relied on interviews of DPD personnel about the FDRB process generally. We were told that the oral presentations about the facts and issues in officer-involved shooting generally lasted about five minutes and that the Board's discussion prior to a vote lasted a maximum of five minutes, often much less. The DPD personnel we spoke to all thought that the

⁷⁹ We were not provided with the Internal Affairs file, but rather only with a three-page summary of the eight interviews. We thus were not able to evaluate the quality and thoroughness of the Internal Affairs investigation.

review process since the 2004 and 2005 changes was more thorough than was the fact in earlier years. From the information we were able to glean, the DPD's decision to improve its review process was a wise one. The Department deserves credit for having done so before its processes were scrutinized in this review.

Even though their scope was officially narrower, the incident reviews done by the District Attorney's office were more probing and rigorous. They had the additional salutary benefit of being public documents. During the relevant period, the District Attorney's letters consistently made the point that his decision not to file charges was "based on criminal law standards" and that "it does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed and redressed." While the DPD is now responding to the oft-extended invitation from the District Attorney, the Department unfortunately did not do so, except in rare instances, with respect to shooting cases from 1999 to 2003.

The District Attorney's office—to its significant credit—was pushing the DPD throughout the period of time we reviewed to analyze the cases from the policy and tactical perspectives. In a letter concerning a 2003 officer-involved shooting, the District Attorney was particularly pointed in pushing the DPD to analyze the tactics in the case, stating:

... [T]he decision was made at that time to kick the door. Whether that was the best tactical option under the specific facts of this case is a legitimate question to be assessed and answered by those responsible for other levels of review of officer-involved shootings. Among other considerations, when confrontations such as this are evolving, officers should keep in mind the gravity of the underlying criminal activity that forms the basis for contacting the party in the first instance; the desired outcome they are attempting to achieve; how quickly action must be taken; and whether disengagement and further planning is practicable. Along with the statutory authority for police officers to use deadly physical force under appropriate circumstances comes the associated responsibility to insure the decisions they make are sound and consistent with their objective. The scope and limit of our authority is only to determine whether criminal charges are fileable [sic] against the officers, not to assess the wisdom or correctness of the string of strategic and

tactical decisions made along the way that placed them in the life-or-death “final frame.”

The letter continued, in an accompanying footnote, as follows:

As I have stated repeatedly and have written in our “Officer-Involved Shooting” enclosure, “The Denver Police Department’s Firearms Discharge Review Board’s after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high.”

We know of no other prosecutor’s office in the country that has taken on such a helpful and constructive role in the review of officer-involved shootings as has the Denver District Attorney’s office. That office, and Messrs. Sims and Lepley in particular, deserve tremendous credit for leadership in this area. As noted, however, the DPD FDRB process that we saw in the cases we reviewed did not live up to the District Attorney’s aspirations for it, generally engaging in pro forma rather than meaningful review. But in 2004 and 2005 the DPD and the City initiated changes that have led to a considerably more meaningful review process.

II. DPD Review Since 2005

As a result of the controversy and concern caused by the Paul Childs shooting in July 2003, Mayor John Hickenlooper, with the support of Manager of Safety LaCabe and Chief Whitman, announced in December 2003 a series of reforms relating to training for and review of critical incidents. With respect to the review of officer-involved shootings, the following reforms were announced by the Mayor:

- The creation by the DPD of a Use of Force Review Board (UFRB) and a Tactics Review Board (TRB);
- Inclusion of two community members on the UFRB;

- A Manager of Safety public report relating to the policy and tactical issues in all officer-involved shootings that caused injury or death;⁸⁰ and
- A task force that led to the creation of the Office of the Independent Monitor.

These reforms collectively have created a meaningful review process for DPD officer-involved shootings, though, as we will discuss, there is still room for improvement in the processes. Our conclusions are limited to the processes themselves, rather than to their application to specific incidents, as we have not reviewed any case files for shootings since the reforms were implemented.

In revisions to the Operations Manual in 2004, the DPD created the UFRB, which is required by Manual §105.05(1) (rev. 3-06) to review:

- “All incidents where serious injury or death results from any officer-involved use of force;”
- “[A]ll firearm discharges by active members of the Department,” except “authorized training at a target range” and “legitimate sporting activity;”
- “[A]ny in-custody death;” and
- “[A]ny incident as directed by the Chief of Police.”

Manual §105.05(1) further states that “The Board is investigative in nature and is responsible for making recommendations on administrative justification, Internal Affairs investigations, Department policy modifications, training, and commendations. The Board is empowered to classify a case as Unfounded, Exonerated, Not Sustained, or Sustained, and specify what disciplinary action, if any, should be taken.”

The members of the UFRB are the four Division Chiefs of the Department (as was true of the FDRB) and “[t]wo community members trained and certified by the Department.” Manual §105.05(5)(b). Unlike the FDRB, the involved officer’s commanding officer is

⁸⁰ Currently, the Manager issues of public report only with regard to fatal officer-involved shootings.

not a member of the UFRB. The commander, however, is still expected to participate in the review, providing the knowledge and perspective of someone who usually knows a great deal about the involved officer's history and performance. This change was a positive one. The UFRB still gets to hear the valuable information and perspective the commanding officer provides, without running the risk that the commanding officer will be a partisan for the involved officer. Observation of and information gathered about similar boards around the country has shown that an officer's commanders often feel obligated to back up officers under their command, rather than looking objectively at the facts of an incident. The DPD has struck exactly the right balance concerning commanding officer involvement in the UFRB.

The addition of the two civilians to the UFRB was also consistent with evolving national standards. Phoenix, for example, has three citizens and Portland has two on their equivalent force boards. Civilians bring a broader perspective and a heightened sense of the community's sensibilities to the review process. Having no stake in the internal DPD culture, a citizen in theory has more latitude to provide full and frank criticism when such candor is needed. Their inclusion also is calculated to increase community confidence in the process. The challenge for civilians is to achieve a sufficient level of knowledge of DPD policy and law enforcement tactics to feel confident enough to express opinions that may be contrary to those of four experienced and high-ranking members of the Department. Manual §105.05(5)(e)(2) wisely mandates a minimum level of instruction in use of force policy and related subjects for civilian members of the UFRB. While the Manual sets forth the minimum training requirements, **we recommend that those minimum requirements be strengthened to require attendance at and satisfactory completion of a Citizen's Academy and participation in at least one ride-along every six months while assigned to the UFRB pool.**

Manual §105.05(5)(e)(1) and (3) provide that the DPD picks the citizen members who will serve on a rotational basis on the UFRB from the pool of those community members selected to serve on the Disciplinary Review Board (DRB). Currently there are eight UFRB citizen members whom some in the DPD perceived to be the "best" among the

members of the DRB pool. Manual §503.01(7)(a), which establishes the citizen selection process in significant detail, provides that citizens be selected for the DRB pool by the Manager of Safety, the Executive Director of the Denver Civil Service Commission, and a City Council member. **We recommend that the same three individuals empowered to select citizens for the DRB pool also pick which citizens from the larger pool will serve on the UFRB.** Just as the selection process for the DRB pool is set up to provide confidence in the objectivity and diversity of the citizens selected, so should the selection of the UFRB citizen members. Providing that power to the DPD creates an appearance that the DPD could handpick citizen members whom it thought would be favorable to its point of view. Since one of the key purposes of citizen involvement in the UFRB is to increase community confidence, it is wise to avoid creating any doubt as to the objectivity and fairness of the process.

Manual §503.01(7)(a)(7) in general limits citizens to participation in no more than three UFRB and DRB panels per year. This provision is appropriate, but **we recommend that it be improved by requiring that the number of UFRB citizen members in the pool be small enough that individual citizen members generally would serve on at least two UFRB panels per year.** We recommend this minimum level of service to try to ensure that citizen members become familiar enough with the policy and tactical issues presented by serious force cases so that they are able to engage constructively with the four seasoned police executives with whom they serve on the UFRB. We have been informed that the opinions of some citizens on UFRB panels seem to be unduly influenced by the opinions of the Division Chiefs. The rationale for our recommendation of service on at least two UFRB panels a year is to assist citizen members to reach the level of knowledge and confidence necessary to avoid being unduly influenced by the Division Chiefs.

As discussed in Chapter 2, once Homicide concludes its investigation, Internal Affairs reviews the file and decides (usually in the negative) whether to conduct further investigation. After Internal Affairs decides that it will not conduct further investigation, or after it completes its investigation if it decides to do so, Internal Affairs schedules the

case for UFRB review. The Board is then required to review the entire file including videotapes. Manual §105.05(2)(a). The Division Chiefs are already familiar with the cases because they now routinely roll out to the scene of officer-involved shootings.

Either Homicide or Internal Affairs makes a PowerPoint presentation of the case to the UFRB. The involved officer is given an opportunity to testify before the Board, but in practice the officers nearly always decline to do so, apparently on the advice of their attorneys. The UFRB sometimes calls experts, generally from inside the DPD, to testify concerning a point pertinent to the case. The Independent Monitor, who attends all UFRB proceedings and who recapitulates in his office's annual reports the outcomes related to all officer-involved shootings, is permitted to express his view of the case or a relevant point, but only during the presentation stage, not during the deliberations. **We recommend that the Independent Monitor participate in the deliberations inasmuch as citizen members of the board do not necessarily raise the Independent Monitor's concerns.** Consideration of a case may take as short as 15 minutes or as long as several hours. The case presentations and discussions at the UFRB have been reported to be in much greater depth than was the fact at the FDRB.

After hearing all the pertinent facts and testimony, if any, the UFRB deliberates and votes on whether the officer's conduct was "in policy" or "out of policy."⁸¹ We make two recommendations concerning the ultimate results of the UFRB review. **First, we recommend that each UFRB member vote whether the officer's actions should be classified as Unfounded, Exonerated, Not Sustained, or Sustained.**⁸² These classifications, which are required by Manual §105.05(1), are more precise than "in" or "out of" policy. At present Internal Affairs reclassifies "in policy" findings by the UFRB as "Exonerated" in its records. The disposition of a case is a judgment that should be made by the UFRB directly.

⁸¹ The Independent Monitor discussed in his 2005 Annual Report that some Division Chiefs were reluctant to express their opinion in deliberations as to what they believed the correct finding by the UFRB should be. The Monitor addressed that issue with the Chair of the Board and the practice of some members of withholding their reasoning ceased.

⁸² The meaning of each of these four classifications is set forth at Manual §503.01(5)(b)(13)(a)-(d).

Second, and more importantly, we recommend that the Manual be amended to provide for an additional case classification: Exonerated—Tactical Improvement Opportunity. When using that disposition, the UFRB would be required to specify in writing how the tactics employed should have been improved. The proposed classification would be appropriate when the UFRB found that no violations of DPD policy occurred, including tactical violations that were serious enough to constitute a violation of policy, but that the tactics employed were less than satisfactory. Tactical deficiencies of this nature would customarily result in additional training for the involved officer. Our recommendation is derived from the review classification—Justified, Tactical Improvement Opportunity—adopted by the Metropolitan Police Department in Washington, DC as a result of a settlement agreement with the U.S. Department of Justice relating to the MPD’s force policies and other matters.⁸³ The “Tactical Improvement Opportunity” outcome for the UFRB ensures that the Board formally consider whether there were tactical issues in the case, even if they do not rise to the level of violations of the DPD Manual. The explicit consideration of tactics is important because poor tactics frequently lead to shootings in situations where good tactics might have led to a resolution that did not involve the use of deadly force.

As part of the 2004 reforms, the DPD also created a Tactics Review Board. Manual §105.09(1) (rev.3-06) defines the primary role of the TRB as follows:

The primary function of the Tactics Review Board is to review those tactical situations or incidents ... where there is a possible deviation from Department training, policy, or procedure. These do not include incidents reviewed by the Use of Force Review Board except as requested. The Board will conduct its review in order to determine compliance with existing policy and procedure; the need for revisions to policy, procedure, or training; proper management of the situation by supervision and command; and commendatory actions. ...

As used in this policy, the term tactics shall be defined as the strategies and techniques employed by officers designed to reduce risk to themselves or others in order to achieve a legitimate police goal. These shall include **but not be limited to** the elements of communication,

⁸³ See Metropolitan Police Department General Order 901.08, Use of Force Investigations, at 14 (October 2002).

vehicle operation, arrest control, crowd control, less-lethal force, firearms, search, movement, cover and concealment, and positions of peril.
[Emphasis in original.]

The TRB consists of seven members with particular tactical expertise, including two members from other law enforcement agencies. Manual §§105.05(3)(c) and 105.09(4)(d) allow the UFRB to refer a tactical question that arises during the presentation of a case to the TRB and to defer resolution of the case until it receives the TRB's recommendation on the referred issue. Manual §105.05(3)(d) further provides for a referral by the UFRB to the TRB of tactical issues following the UFRB's completion of consideration of a case. We are told that the UFRB has used each of these referral mechanisms on at least one occasion. On at least one other occasion the commanding officer of Internal Affairs, with permission from the Division Chiefs and with support from the Monitor, has referred a tactical issue identified in the Internal Affairs investigation to the TRB prior to the UFRB having heard the case. While such a referral prior to the initial UFRB hearing is not contemplated by the Manual, those involved have deemed it more efficient and elucidating for the UFRB to obtain the TRB's opinion in advance rather than having to convene, refer to the TRB, and reconvene. We agree.

To the best of our knowledge the type of interplay between the UFRB and TRB on UFRB cases is unique to the DPD. In interviewing DPD personnel who have had involvement with this interplay, we received conflicting opinions as to how well it worked. A number of people speculated about the merger of the two boards, or of their functions, for cases within the jurisdiction of the UFRB. The Monitor documented a case in his 2005 Annual Report (p. 5-12) where the UFRB and TRB reached conflicting conclusions about the tactics employed in an officer-involved shooting. The UFRB has *de facto* expressed an opinion on its relationship with the TRB by fashioning what it sees as a more efficient way of getting TRB recommendations, albeit outside the procedures set forth in the Manual. The fact that the UFRB-TRB interrelationship is unique is not a reason to recommend a more typical review process.

The issues from our evaluative point of view are: (1) does the DPD review process for officer-involved shooting incidents work effectively and efficiently? and (2) does the role of the TRB in any way diminish the likelihood of the UFRB fulfilling its critical responsibility to reach conclusions about the tactics employed by officers in cases within the UFRB's jurisdiction? If the answer to the second more specific question is affirmative, or uncertain, changes need to be made, as the UFRB would be failing to fulfill an essential function if there were any doubt that it was reaching conclusions about the tactics employed in the incidents it considers. **We recommend that the DPD, having three years' experience with the operation of the UFRB and DRB, formally evaluate whether the interplay between the two boards works effectively and efficiently on UFRB-eligible cases and whether the UFRB is appropriately evaluating tactics in the cases it considers.**

In addition, **we recommend that when the TRB reports back to the UFRB on a case pending before the latter board, the TRB memorialize its recommendations to the UFRB in writing.** At present, a representative from the TRB solely presents an oral report to the UFRB. Particularly since the UFRB refers cases to the TRB only when it considers the question complex or sophisticated, it seems undesirable to have the report on the TRB's conclusion presented only orally.

A review of a listing of the dispositions by the UFRB for 2006 and most of 2007 seem—without our knowing the facts of the cases considered by it—to represent a fair range of conclusions. Excluding accidental discharges,⁸⁴ the FDRB found three cases to be out of policy and had split votes on the in/out-of-policy issue on two occasions. We were also told that the UFRB referred one case to Internal Affairs for further investigation. While these are very rough indicators, they—along with the information we have from the Independent Monitor's annual reports—suggest that the UFRB is providing meaningful review.

⁸⁴ Both the FDRB and UFRB consistently have found accidental discharges to be out of policy and have levied fines of one day's pay.

The UFRB also has power to make recommendations to the Chief about Department policy and to the Chief and the Training Bureau about training issues. Manual §105.05(3)(e) and (f). The FDRB had similar authority but rarely, if ever, used it. We were informed that in the past three years the UFRB has made one recommendation of this nature: recommending an analysis of the safety of the holsters used by DPD officers. While not every case presents an opportunity for policy or training recommendations, we suspect—based upon the usage to date—that the UFRB is underutilizing this important review function. **We recommend that the UFRB carefully and specifically consider in each case whether there are policy, training, or tactical issues as to which the UFRB should make a recommendation and, when there are such issues, to make appropriate recommendations as provided for in Manual §105.05(3).**

We have identified one gap in Manual §105.05(3) concerning documentation of the work of the UFRB. In cases with split votes, there is no requirement for documenting the recommendations and rationale of the members whose views represent a minority on a particular decision. So, on a matter where the UFRB split 4-3,⁸⁵ under the present rules, the Chief would be advised only as to the recommendations of the majority. In light of the fact that UFRB decisions are all recommendations, it is important that the Chief and others who are asked to act on recommendations understand the positions and rationales of all members of the UFRB. **We recommend that Manual §105.05(3) be amended to provide that in all cases where the UFRB makes a recommendation by a split vote the alternative recommendations of the minority be documented and submitted to the recipient of the recommendation together with the recommendations of the majority.**

Since the conclusions of the UFRB as to the appropriateness of an involved officer's use of force are recommendations to the Chief, who in turn makes a recommendation that is still subject to the ultimate decision of the Manager of Safety, the Independent Monitor can and does (at least until very recently, as described below) register his disagreement

⁸⁵ The Board Chair, the commanding officer of Internal Affairs, is authorized to vote to break a tie (but not otherwise). Manual §105.05(5).

with UFRB conclusions with the Chief and, if unsuccessful at that level, with the Manager. Having this input and testing of results from a knowledgeable professional with access to all the pertinent information is a significant safeguard to the thoroughness and objectivity of the process.

Until recently, the Monitor was allowed to publicize the UFRB results and his agreement or disagreement with them. Currently, however, absent specific consent from the Manager of Safety to publicize recommendations by the Chief of Police or the UFRB, the Independent Monitor may only publicize agreement or disagreement with the decisions made by the Manager of Safety. The City's current legal position is that the recommendations of the Chief and the UFRB are protected by a deliberative privilege. Although it is difficult to make decisions in a fishbowl with everyone watching, and although candor may diminish as transparency increases, it is nonetheless of benefit that the light of publicity be shone on these decisions. Whether they agree or disagree with the UFRB's conclusions, the people of Denver should have access to information about what happened in the review process and about the opinions of a trained, independent professional. Such transparency plays a significant role in fostering accountability. It also gives the people of Denver a deeper and more nuanced understanding of the many issues raised by a shooting. **We recommend that the Independent Monitor again be permitted to publicly express agreement or disagreement with the Chief of Police or the UFRB.**

The timeliness of UFRB reviews is considerably better than was the case with the FDRB, where cases generally were not reviewed for at least six months and not infrequently were not considered for more than a year. Only two of the 2005 and 2006 UFRB officer-involved shooting reviews were not completed within six months (the longest period being 7.5 months) and the average time to review for 2005 and 2006 cases was 4.8 months. One of the reasons for the quicker turnaround in the review process is that the District Attorney's office is issuing its letters generally in a matter of weeks, and sometimes within several days, of the incident. While the elapsed time until review for 2005 and 2006 cases was an improvement over the FDRB's record, it was not optimum.

In his 2006 Annual Report (p. 6-6) the Monitor identified delays by Homicide in completing its file and turning it over to Internal Affairs as the principal cause of the delay in UFRB review of shooting cases. We are informed that in the past nine months Homicide has significantly accelerated its completion of its files and the elapsed time to UFRB has dropped correspondingly. The DPD, the District Attorney, and the Monitor all deserve credit for improving the process so that UFRB review generally occurs in a timely manner.

The final important reform related to the review process announced by Mayor Hickenlooper in December 2003 was the issuance by the Manager of Safety of public reports explaining how the administrative investigation and review of uses of force that resulted in death reached the conclusions they did. The Manager of Safety's reports were meant to explicate the administrative and tactical perspectives of officer-involved shooting investigations just as the impressive District Attorney's reports focused on the criminal perspective of the investigations. The nine public reports the Manager of Safety has issued to date are detailed, informative, and focused on the appropriate issues. The Manager and Deputy Manager, who was hired in late 2006 in significant part to assist in drafting these reports, write impressive reports that, in addition to detailed discussions of relevant facts, focus on the following important and appropriate tactical issues:

- The reasonableness of the tactics employed by the officer immediately before the shooting;
- The reasonableness of the officer's assessment of the threat; and
- The reasonableness of the use of force option chosen by the officer.

In his 2006 Annual Report (p. 6-7), the Monitor identified the lack of timeliness in the Manager's letters as a significant problem. At that point, in March 2007, the Manager had issued only two public reports in three years, both in cases involving the imposition of substantial discipline. Since the Monitor's report pointed out the problem, the Manager has issued seven public reports, four in December 2007 alone. The Manager and Deputy Manager now have eliminated the backlog, for which we commend them

both. The Manager's letters are a critical component in explaining to the community how the DPD and the Manager analyzed the policy and tactical issues in officer-involved shooting cases. Denver is setting the standard for the rest of the country in issuing such reports. While a few jurisdictions have explained the results of administrative investigations in individual high-profile cases, we know of no other jurisdiction that is issuing such reports on all uses of force resulting in death. The Mayor and Manager of Safety deserve tremendous credit for taking this groundbreaking step.

III. Commendations

We looked at the commendation process only insofar as it relates, or should be related, to the review process.⁸⁶ Both the review process and the award process look retrospectively at events and make judgments about what occurred. Review seeks to foster accountability and identify lessons learned. Commendations seek to reward for exemplary behavior. Because meaningful review requires an evaluation of the strengths and weaknesses of an officer's performance, the judgments that must be made in each process are similar in nature, even if different in purpose. Insofar as the review process identifies policy or tactical weaknesses in an incident, particularly if they seem to have led to a shooting that otherwise might have been avoided, the Department should want to avoid rewarding an officer for engaging in dubious tactics. If the DPD were to give commendations in a case where poor tactics were employed, it would undercut the positive focus of the review process that seeks to encourage good tactical decisions.

An analysis of the 24 cases in our 1999-2003 sample involving shots fired by DPD officers shows the greatest correlation both as to whether one or more commendations were awarded and the level of those commendations was the degree of harm suffered by the suspect. If a suspect was killed in the shooting, the shooter was certain to get a commendation (unless the shooting was held to be violative of policy) and was likely to

⁸⁶ We did not seek to determine whether awards should or should not have been made. We express no opinion on that topic.

receive the DPD's highest award, the Medal of Honor. Of the 13 Medals of Honor awarded to officers involved in the 24 shooting incidents we reviewed, 12 went to officers involved in cases where the suspect was killed. If a suspect was only wounded, the officers involved had a substantial chance of receiving a commendation. But if the suspect was not hit by the officers' shots, officers were unlikely to receive a commendation. Here are the statistics organized by the harm suffered by the suspect:

- **Killed (11 cases):** One or more commendations, including 12 Medals of Honor, awarded in 10 cases (all except the one case where the shooting was held to violate policy).
- **Wounded (6 cases):** Four of six cases resulted in one or more commendations, with no Medals of Honor.
- **Non-Hit (7 cases):** One of seven cases resulted in commendations, with one Medal of Honor.

We have no way of knowing whether the correlation we have identified was a factor in the decisions to award commendations or in determining the level of commendation that should be conferred, but it creates an appearance that factors other than “a specific act or acts of gallantry or meritorious service”—the standards set by Manual §503.03(1)—played a role in the decision-making. We also note that in determining eligibility for the Medal of Honor, the DPD's highest honor, Manual §503.03(5)(a)(2) states: “There must be no margin of doubt or possibility of error in awarding this honor.” But looking at the eight cases in which the 13 Medals of Honor were awarded, many involved poor tactics that had they not occurred, there may have been no necessity to use deadly force. Moreover, the deficiencies in the investigations in two of the cases where three Medals of Honor were awarded left open the possibility that some of the shots fired could have been legally unjustified. The issues we identified in our case reviews seem at odds with the eligibility standard for any commendation, much less a Medal of Honor.

To avoid undercutting its message that officers are required to employ good, prudent tactics, **we recommend that the DPD find an officer who employs poor tactics**

ineligible for consideration for a commendation and we further recommend that the degree of harm caused to a suspect not be a factor in determining whether to award a commendation or the level of a commendation.

To its credit, as part of the 2004 reforms, the DPD provided that only the UFRB can recommend individuals for consideration by the Commendation Board for any incident reviewed by the UFRB and such recommendations can be made only after the UFRB review has been concluded. Manual §105.05(3)(g).⁸⁷ The DPD thus has the mechanism in place for implementing the preceding recommendation. Based upon an analysis of the UFRB's recommendations for the Commendation Board in 2006 officer-involved shooting cases, however, we are concerned that the UFRB may have set the bar too low for its recommendations. We hasten to note that we have not reviewed any of the 2006 cases in question and thus are expressing no opinion based upon the facts and circumstances of those cases. Rather, it is the frequency of the recommendations that leads to our concern.

Of the eight 2006 officer-involved shootings involving a person where the UFRB unanimously found the case to be "in policy," the Board made recommendations to the Commendations Board in seven cases. In the three 2006 officer-involved shooting cases involving a pit bull, all three were recommended to the Commendations Board. The numbers suggest the possibility that the UFRB is determining that virtually every shooting case that it unanimously determines to be "in policy" should be recommended to the Commendations Board. While shootings are certainly traumatic events for officers, it does not seem desirable to award virtually every officer who fires his weapon in the line of duty a commendation, but rather the determination to make such a recommendation should be made on a more discriminating basis following an analysis of the degree of gallantry exhibited in the facts and circumstances of the individual case. More importantly, the UFRB will undoubtedly consider shooting cases when the tactics were less than optimal, but the tactical deficiencies do not rise to the level of a policy violation.

⁸⁷ The DPD should also incorporate this limitation into its general provisions relating to commendations (or insert an appropriate cross-reference). Manual §503.03.

We recommend that DPD policy be amended to reflect that the UFRB should not recommend an individual for commendation by the Commendations Board unless it determines that the officer involved employed good to excellent tactics in the incident under consideration.

Summary of Recommendations.

Internal Review

- 1. Strengthen selection process for civilians to require attendance at and satisfactory completion of a Citizen’s Academy and participation in at least one ride-along every six months while assigned to the UFRB pool.**
- 2. The same three individuals empowered to select citizens for the DRB pool should also pick which citizens from the larger pool will serve on the UFRB.**
- 3. Require that the number of UFRB citizen members in the pool be small enough that individual citizen members generally would serve on at least two UFRB panels per year.**
- 4. Require each UFRB member to vote whether the officer’s actions should be classified as Unfounded, Exonerated, Not Sustained, or Sustained.⁸⁸**
- 5. Amend the Manual to provide for an additional case classification: Exonerated—Tactical Improvement Opportunity. When using that disposition, the UFRB would be required to specify in writing how the tactics employed should have been improved.**

⁸⁸ The meaning of each of these four classifications is set forth at Manual §503.01(5)(b)(13)(a)-(d).

- 6. The DPD, having three years' experience with the operation of the UFRB and DRB, should formally evaluate whether the interplay between the two boards works effectively and efficiently on UFRB-eligible cases and whether the UFRB is appropriately evaluating tactics in the cases it considers.**
- 7. When the TRB reports back to the UFRB on a case pending before the latter board, the TRB should memorialize its recommendations to the UFRB in writing.**
- 8. The UFRB should carefully and specifically consider in each case whether there are policy, training, or tactical issues as to which the UFRB should make a recommendation and, when there are such issues, to make appropriate recommendations as provided for in Manual §105.05(3).**
- 9. Amend Manual §105.05(3) to provide that in all cases where the UFRB makes a recommendation by a split vote the alternative recommendations of the minority be documented and submitted to the recipient of the recommendation together with the recommendations of the majority.**

Commendations

- 10. The DPD should find an officer who employs poor tactics ineligible for consideration for a commendation. The degree of harm caused to a suspect should not be a factor in determining whether to award a commendation or the level of a commendation.**
- 11. Amend DPD policy to reflect that the UFRB should not recommend an individual for commendation by the Commendations Board unless it determines that the officer involved employed good to excellent tactics in the incident under consideration.**

Independent Monitor

12. The Independent Monitor should participate in the deliberations inasmuch as citizen members of the board do not necessarily raise the Independent Monitor's concerns.

13. The Independent Monitor should again be permitted to publicly express agreement or disagreement with the Chief of Police or the UFRB.

CHAPTER 4

INCIDENT REVIEWS

INTRODUCTION

For this report, PARC reviewed 25 DPD officer-involved shootings from 1999-2003 to determine whether there were strategic, tactical, and policy issues and patterns that the DPD should address.⁸⁹ Consistent with our contract with the City, PARC did not re-investigate these 25 cases or form conclusions whether individual shootings were justified or particular officers' conduct was proper or improper. Rather, our review was calculated to make observations and draw lessons that will assist the DPD to devise better tactical and strategic training options for its officers, improve the quality of supervision and management, avoid unnecessary shootings, and better investigate and review deadly force incidents. In this chapter, we look at issues related to critical incident management and tactics.

Critical incidents involve the risk of death or serious injury to police officers or members of the public, including the suspect, third parties, and bystanders. Our review found patterns in which better advance planning, better use of time and avoidance of precipitous action, better communication, and better field supervision might have avoided or lessened the risk of a shooting without subjecting the police officer to greater danger or exposure.

Our review of tactical and strategic issues found patterns in which better handling of traffic stops and foot pursuits might have avoided or lessened the risk of a shooting. Similarly, there were instances where the police tactics may have subjected bystanders to avoidable risk or led to debatable shootings at moving vehicles. Finally, better strategic and tactical options might have led to better outcomes in instances where police officers were dealing with the mentally ill, the developmentally disabled, and persons in a crisis state.

⁸⁹ The 25th case we reviewed involved a shooting in the City of Denver by four Westminster Police Department officers that was investigated by the DPD. That was reviewed solely for issues relating to the investigation and thus will not figure in this chapter.

We suggest areas where improvement may be in order. We hasten to point out that the DPD is not alone or unique in having issues in these areas. They are the cutting edge challenges for major police departments throughout the United States. Importantly, Denver's performance in these challenging areas does not stand out as particularly problematic or acute in comparison with similarly situated law-enforcement agencies. We also want to note instances of bravery and restraint in the cases we reviewed: Some of the DPD officers and supervisors involved in these incidents showed commendable restraint, both in using their firearms, and in directing officers under their supervision to hold their fire in threatening circumstances.

I. CASE CHARACTERISTICS

We briefly describe a few salient characteristics of the incidents, the suspects, and the officers.

Nine of the 24 incidents involved suspects with guns, and two more incidents involved objects (a stick and a pipe) that officers thought were guns being aimed at them.⁹⁰ Four of the suspects with guns fired at the police, with two suspects each wounding one officer. One suspect also deliberately killed a civilian in the course of her confrontation with the DPD. Five of the suspects either pointed their guns in the direction of an officer or displayed the gun, but did not fire a shot. Eight incidents involved suspects armed with a knife. In four cases officers perceived themselves to be in danger from a moving car. In the final case, an officer shot in the direction of an overhead streetlight to try to end an assault by two men without weapons.

The suspects at whom the officers fired, or whose actions led to officers firing, included:

⁹⁰ The suspect with the pipe also possessed a crossbow, but it was the pointing of what the police perceived to be a shotgun that precipitated the shooting.

- Eight male whites (five in their 20's, two in their 30's, and one in his 40's; one of whom displayed a gun, one of whom possessed the pipe perceived to be a shotgun, three of whom possessed knives, one of whom was driving a car, and two of whom were involved in an assault on the officer with their hands and feet);
- Eight male African-Americans (one in his teens, five in their 20's, one in his 30's, and one in his 40's; one of whom fired at the police, wounding an officer, two of whom pointed or displayed a gun, two of whom possessed knives, and three of whom were drivers or a passenger in a car);
- Eight male Hispanics (five in their 20's, two in their 30's, and one in his 40's; two of whom fired guns at the police, three of whom displayed or pointed guns, and three of whom possessed knives);
- A female Hispanic in her 40's who shot at the police, wounding an officer;
- A female white in her 40's who possessed a stick perceived by the officer to be a gun; and
- One female Native American in her 20's who was driving a car.

While there have been and will continue to be to be contentions as to whether some of the shootings and some of the shots fired were justified,⁹¹ none of the shootings appeared from the evidence in the file to be gratuitous or malicious.

Forty-one members of the DPD fired their weapons in the 24 incidents reviewed. Two were off duty at the time of the shooting. The commands of the other members were as follows:⁹²

- District 1 5
- District 2 3

⁹¹ It was not only outside the scope of this review for PARC to reach conclusions as to whether the shootings were justified, but in many cases it would be impossible to make such a determination to a reasonable degree of certainty based solely upon the material in the files we reviewed.

⁹² When more than one officer from a command was involved in shooting in an incident, that command is counted only once in the following list.

- District 4 4
- District 6 7
- Gang Bureau 2
- Narcotics Bureau 1
- Unknown 1

Members of the Department with two to nine years of service were most likely to be involved in firing their weapons, possibly because more of them are assigned to patrol functions. The breakdown by years of service is as follows:

- Less than 2 years 2
- 2 to 4.9 years 14
- 5 to 9.9 years 13
- 10 to 14.9 years 9
- 15 to 19.9 years 2
- More than 20 years 1

Of the 41 members, 39 were male and two were female.⁹³ One was a captain, five were sergeants (three of whom were involved in one incident), one was a detective, and one was a corporal. The remaining 33 were officers. That five sergeants were involved in firing their weapons (four in two separate incidents, each involving the firing of 50 rounds by seven and eight members, respectively) **should cause the DPD to examine these instances to determine if sergeants are properly limiting their role to that of supervisors and for other appropriate lessons that can be learned.** As we discuss further below, sergeants in general should be acting as supervisors—particularly when there are multiple officers on the scene—who are in control of and trying, if possible, to de-escalate critical incidents, rather than engaging directly with suspects.

⁹³ We have not reported on the race and ethnicity of the officers who fired their weapons as that information was often not provided in the files.

II. TACTICAL AND RISK ISSUES

Police work at times is dangerous. The rare situations that threaten officers' lives or the lives of others are interspersed among countless day-to-day interactions with the law-abiding public and with lawbreakers who pose no threat. In certain of those dangerous situations, officers will have no good option but to use deadly force. In other instances, different strategies or tactics might have obviated the need for deadly force. Officers often need to weigh the risks of taking quick action with insufficient information or resources against the risks of waiting sufficient time to muster the information and resources. It can be the case that officers who employ deadly force may have unnecessarily put themselves in a position of mortal danger. Analysis of recurrent patterns in deadly force cases permits law enforcement executives to identify such patterns and revise training and policy accordingly.

In each of the 24 cases we reviewed, we found one or more tactical improvement opportunities. On the other hand, some of the officers and supervisors involved in these incidents showed commendable restraint, both in using their firearms, and in directing officers under their supervision to hold their fire.

In each instance where the DPD's performance fell below good practice, the chances of an officer or civilian suffering harm increased. This does not mean that these lapses in and of themselves caused otherwise avoidable injuries or deaths. So many variables affect the outcome that such judgments typically cannot be made with any degree of assurance: Would a gun-toting suspect who was confronted in a poorly-managed police operation have been shot in any event even if a well-managed strategy had been employed? Would a knife-wielding subject who was shot with a firearm have been effectively subdued if a less-lethal weapon had been deployed? In most cases, one can only speculate whether a lethal outcome *could* have been avoided. Although it may not be possible to say, case-by-case, whether death or injury was truly avoidable, it is undoubtedly the case that sometimes the answer to that question will be "yes." Substandard performance in managing the risk of deadly force, therefore, invites avoidable trauma, pain, and grief for officers and civilians alike.

A. Critical Incident Management

Critical incidents—situations of potentially life-threatening danger to police officers or members of the public—demand a skillful, deliberated, tactically sound police response. A police department that consistently does so will have gone a long way towards eliminating avoidable uses of deadly force and frayed community relations.

While critical incidents like terrorist bombings are a rare occurrence, others—such as the cases we reviewed—constitute relatively routine police work. When officers have no option but to react immediately to a rapidly unfolding incident, the opportunity for consideration of alternatives is limited. In some of the incidents we reviewed, officers had to make split-second decisions in response to immediate deadly threats. Yet in 14 of 24 cases, the officers had advance indication of real danger and thus had time to consider alternatives and adopt sound tactics and strategy. In these cases, the involved officers, to varying degrees, failed to do so, thereby unnecessarily jeopardizing their own safety as well as that of bystanders and suspects.

Consideration of officer-involved shootings entails much more than simply questioning whether officers had a plausible justification for pulling the trigger. Rather, one must conduct a step-by-step analysis from the first moment the DPD was notified that something potentially dangerous was unfolding. One must then critically examine the actions and omissions of all those personnel who became involved, or whose involvement should have occurred but did not, through to the incident's conclusion.

1. Planning

Whenever police officers have the opportunity to formulate a well-considered plan before taking action, they should take full advantage and do so effectively. To do otherwise is to virtually guarantee a sub-optimal response to whatever challenges an incident might present. In an August 1, 2004 Training Bulletin on “Tactical Principles,” that compiled many of the points that the DPD had been using in various training courses, the Training Bureau appropriately stated:

Rapidly evolving situations are some of the greatest challenges a police officer can face in the performance of duty. ... It is important to remember that with many situations, time is an ally. Time can provide an opportunity to assess an incident, gather intelligence, assume a safer position, consider options, summon assistance, formulate a plan and initiate a tactic when you are ready.

Notwithstanding these excellent principles, lack of appropriate planning was more of a challenge in the cases we reviewed than any other issue, manifesting itself in 19 of the 24 cases in our sample. Examples of where additional planning would have been appropriate follow:

Gathering necessary intelligence before taking action

- Officers did not debrief family members who vacated a house during a domestic disturbance. A debriefing would have led to the important information that the suspect was developmentally disabled. The suspect died in the police shooting.
- Officers who had asked a domestic violence victim to lure the perpetrator back to her house did not obtain full information of what the perpetrator had said to the victim over the telephone—most particularly, that he was now armed with a knife. The police confronted and killed the suspect with the edged weapon.

Taking account of risk factors

- In seeking to apprehend a narcotics suspect, officers planned a “knock and talk” that did not take into account the various known factors that made it unlikely the suspect would simply surrender when questioned by the police.
- In seeking to apprehend two men in possession of a stolen car who were trying to escape, an officer ran beside the car and tried to open the

passenger side door without contemplating the consequences if the suspects possessed a gun or the driver tried to hit him with the car.

Assembling sufficient police resources before taking action

- A DPD member engaged in and continued a solo foot pursuit of an armed suspect even after the officer was injured going over a fence and thus at a tactical disadvantage.
- Another DPD member, absent exigent circumstances, engaged a suspect at night in an outside unlighted area when he had no flashlight and backup officers were only moments away. The suspect held a stick. She was shot in the legs.
- In the absence of a need to act immediately, and knowing that two backup officers would be on the scene very quickly, an officer nonetheless entered the room of a suspect who had immediately before threatened building security with a knife. The suspect was killed.

Using available time

- In non-emergency circumstances, without a plan and without waiting for a supervisor, multiple officers confronted a distraught armed suspect who was known to be alone in an apartment. The suspect was killed.

In each instance cited here, better planning could have enhanced officer safety and reduced the likelihood that officers would need to use their weapons in self-defense.

In order to minimize risk, the DPD must ensure that, whenever feasible, a sound plan is devised before action is taken in critical incident situations.

2. Communication

Effective communication is an essential element of any well-managed police operation. Our review identified failures in communication as problematic in five cases. Ineffective

communication by officers can make it difficult for supervisors to take control and coordinate and direct officers at the scene. Likewise, communication failures by supervisors can produce suboptimal performance in the field. These issues are demonstrated in the following examples:

Alerting colleagues to danger

- An officer did not tell a colleague officer who backed him up in a car stop already in progress that he believed the passenger was carrying a weapon or contraband. The colleague went up to the car and was shot in the face. The other officer killed the suspect.
- An officer who called for backup in a foot pursuit did not communicate that he had information that the suspect was carrying a gun.

Supervisors communicating tactical instructions

- A sergeant, who appropriately designated one officer in a standoff to be the shooter if needed, neglected to direct the other officers not to fire when the designated officer was commanded to. Thereafter, 50 rounds were fired and the suspect was killed.

Communicating key tactical decisions

- Officers who were assigned to watch the back of a house where a “knock and talk” involving multiple officers was about to occur approached the back door and opened the metal security door without giving notice to their colleagues in the front of the house.
- A member who was the sole officer in the area did not communicate that he was engaging in a pursuit in his car of a pedestrian and, when he exited his car to engage in a foot pursuit, neither communicated that fact nor took a radio with him.

The DPD should ensure that officers are properly trained to communicate all pertinent information and, when there are deficiencies in communication, officers should be retrained or, in appropriate circumstances, disciplined.

3. Field Supervision

Our review identified eight cases where substandard supervision caused or contributed substantially to a poor outcome. Effective supervision leads to better outcomes. For example, the San Diego Police Department has found that getting a supervisor to the scene of a critical incident reduces the chance of an officer-involved shooting by 80 to 90 percent. Police Executive Research Forum, *Chief Concerns: Exploring the Challenges of Police Use of Force*, p. 10 (April 2005). Experience from the San Jose Police Department also suggests that more effective supervision was the prime cause in a steep reduction in officer-involved shootings.⁹⁴ An effective field supervisor is alert at all times to his or her officers' activities, and seeks to actively manage the police response to any incident that is life-threatening or that requires the coordination of multiple officers' actions.

The DPD should seek to ensure that all supervisors are equipped with the requisite skills and knowledge to effectively command their officers whenever a critical incident arises. As Chief William Lansdowne has noted, the San Diego Police Department has trained its sergeants who are responding to critical incidents “to work as a team, to slow things down, and accept the responsibility of doing this work safely.” Police Executive Research Forum, *Chief Concerns: Exploring the Challenges of Police Use of Force*, p. 11 (April 2005).

⁹⁴ Inquiry into how the San Jose (CA) Police Department, in a city of 900,000 with more than 460,000 calls for service in 2002, reduced its “hit” shootings from eight in 1999 to zero for a 16-month period from January, 2002 to May, 2003 showed that more accountability for and more effective supervision by sergeants was a critical—possibly the most critical—factor. (It should be noted that there were two “non-hit” officer-involved shootings in 2002.) “Cop Complaints Drop for Fourth Straight Year,” and “Police Shooting Kills Man in S.J.,” *San Jose Mercury News*, May 2 & 5, 2003; conversation with now-Deputy Chief Christopher Moore, San Jose Police Department.

Sound critical incident management can occur only when field supervisors perform their role effectively. Although the sheer variety of incidents the Department faces might rule out the use of a “one-size-fits-all” model of incident management, adherence to the following general principles would increase the likelihood that incidents will be better managed by the DPD:

- **Supervisors should become involved in critical incidents at the earliest possible stage. Dispatchers should inform a sergeant as soon as any potential critical incident reports are received, and officers should be directed to inform a supervisor without delay whenever they encounter such an incident.**
- **Whenever feasible, supervisors should determine the tactical and strategic approaches to be taken to critical incidents, and should direct the actions of involved officers.**
- **Supervisors should be held accountable for the performance of the officers under their command whenever a critical incident occurs.**
- **Supervisory training should emphasize critical incident training and the Department should ensure that supervisors consistently manage operations according to the sound principles such training promotes.**

The following are examples of problematic supervisory performance identified during our review:

Supervisors issuing tactical instructions

- Supervisors on the scene, having assigned one officer to be the designated shooter, issued no instructions to other officers to hold their fire.

- A sergeant, while meeting with a team devising a plan to apprehend a suspect at a neighboring location, failed to leave one member of the team to continue surveillance. When the circumstances changed, the plan was no longer tactically sound.

Supervisors assuming a supervisory role

- Instead of taking a leadership role, a lieutenant on the scene of a critical incident played no role in a slow-moving critical incident. Ultimately, 50 shots were fired, killing the suspect.
- Rather than waiting for officers who were responding to the scene and supervising their actions, a sergeant immediately engaged the subject, despite the absence of emergency circumstances. The woman was suspected of harassing her ex-boyfriend. She was shot in the legs.
- Despite three officers being assigned to a call involving violence for an extended period of time and devising an elaborate, but seriously flawed, plan to apprehend the perpetrator, the shift sergeants apparently did not inquire concerning what was occurring.

Supervisors overruling inappropriate strategies

- An acting sergeant did not overrule a plan that had an officer on foot playing the principal role in trying to apprehend suspects in a stolen car.

B. Field Tactics

The use of sound, safety-conscious tactics when dealing with an incident where a person is known or suspected to be armed or otherwise dangerous minimizes the chances that officers will find themselves exposed to life-threatening risk. Consequently, the consistent use of sound tactics reduces both the dangers officers face and their need to use their firearms in self-defense.

Our review of officer-involved shootings included a detailed analysis of the tactics used in each case. Our analysis revealed a number of recurring tactical problems that unnecessarily exposed officers or civilians to danger. The following sections discuss the most prominent tactical issues our review identified.

1. High-Risk Vehicle Stops

A significant area of tactical deficiency involved high-risk vehicle stops. Any vehicle stop involving a suspect who is known or suspected to be armed should be considered “high-risk” and demanding of a tactically sound approach by officers. Sound high-risk vehicle stop tactics involve multiple officers, acting in coordination; provide the protection of distance and cover and concealment for those officers; and place suspects at a significant tactical disadvantage from which their ability to launch an effective attack or escape is constrained. In short, sound high-risk vehicle stop tactics provide for the effective apprehension of criminal suspects while minimizing officers’ exposure to risk. Failure to use such tactics, conversely, generates unnecessary exposure to risk and a heightened danger that officer-involved shootings will occur.

We identified a number of tactical problems in high-risk vehicle stops that evolved into officer-involved shootings, illustrated by the following examples:

Treating stop as high-risk

- An officer used the circumstance that a stolen car temporarily could not move because it was behind other cars at a red traffic light to reach into the car and try to pull the driver out, despite the risk and despite the foreseeable changing of the light to green.
- An officer on foot chased a stolen car around a parking garage and ended up nearly being run down by the car.
- Without communicating with his backup on the scene, an officer reaches into a car and attempts to control the concealed hand of a gang member

suspected of carrying a weapon or contraband. The officer was shot in the face by the suspect.

Assembling sufficient resources before initiation of stop

- An officer initiated a stop of a stolen vehicle despite knowing that four other officers were responding to assist him.

Coordinating actions of officers involved in stop

- In a stakeout of a stolen car, officers in a car that was supposed to block the stolen car from leaving its parking space did not move into place in time to stop the car from fleeing.

Getting too close to the suspect's vehicle

- An officer concluded a vehicle pursuit by ramming the left rear of the suspect's car, leaving himself vulnerable when the suspect confronted the officer as he tried to exit his car.

2. Shooting at Moving Vehicles

In Chapter 1 we set forth our recommendation that the DPD adopt a policy that officers be prohibited, absent defined exigent circumstances, from shooting at moving vehicles unless a person in the vehicle is using or imminently threatening to use deadly force other than the vehicle. The soundness of that recommended policy can be seen in all four cases we reviewed where officers shot at moving vehicles. In each instance, the officers had deliberately put themselves in proximity of the vehicles, thereby endangering themselves. In all four cases, the officers had ample opportunity to avoid danger to their safety from the vehicles had they sought to avoid that danger.

3. Foot Pursuits

In Chapter 1 we also discuss the DPD's Training Bulletin on foot pursuits and our recommendations to incorporate the bulletin into policy and to strengthen its provisions. Four of the foot pursuits—all of armed suspects—illustrate some of the dangers that the DPD Training Bulletin and an effective foot pursuit policy warn against. In three of the cases, a lone officer took the suspect into custody at the conclusion of the pursuit rather than waiting for assistance from other officers. In one of these cases the risk was compounded in two ways: (1) the officer injured himself during the pursuit while going over a fence and (2) the officer had neither broadcast that he was engaging in a pursuit nor did he take his radio with him when he left his car. In two of the cases, the officer continued the pursuit after having lost sight of the suspect. In another case, an officer was following the fleeing suspect so closely that he was severely endangered when the suspect suddenly stopped and drew a handgun. These incidents support the need for the DPD to turn its Training Bulletin into policy as holding officers accountable for following the policy will better protect officers, as well as reducing the likelihood of officer-involved shootings.

4. Bystander endangerment

Although officers' exposure to risk during encounters with dangerous or potentially dangerous suspects should always be a key tactical consideration, the necessity of minimizing bystanders' exposure to danger is equally important. Nonetheless, in five cases, bystanders appear to have been unduly endangered.⁹⁵ **The DPD should ensure that such endangerment is minimized in future operations.** Incidents of bystander endangerment we identified included the following:

- After responding to a domestic violence incident, officers asked the victim to lure the perpetrator back to her house, but they did not take steps to prevent the suspect's re-entry into the house or to protect the women and

⁹⁵ Bystander endangerment was typically the product of poorly coordinated responses to dangerous incidents. DPD investigators and reviewers, however, never documented it as a matter of concern.

children inside the house during the time it took for the police to respond from where they were hidden down the block.

- An officer left a victim with a suspect's associate, about whom he knew nothing (including whether he was armed) other than that he was with the suspect when the victim identified the suspect, while he pursued the armed suspect.
- An officer fired seven shots at a window where he saw muzzle flashes but could not see the suspect, without knowing whether there were innocent bystanders in the house (there in fact were four).
- During a fight outside a neighbor's house, an off-duty officer, who had been drinking and who did not identify himself as a police officer, fired a shot at an overhead street light while surrounded by people from the neighbor's party.

C. Encounters with Individuals in Crisis with Mental Illness, Developmental Disabilities, and with Suicidal Ideation

Our review included 11 instances where DPD members encountered individuals with mental illness, developmental disabilities, in crisis, or actively pursuing suicide. In five of the cases reviewed for this report, the police officers knew of the subjects' mental illness, developmental disability, state of crisis, or suicidal ideation ("in crisis" hereafter) before the shooting. In two additional cases, more would have been known about the subject's developmental disability or state of mind had the officers who responded debriefed the civilians on the scene.

As is discussed in Chapter 1, the DPD has formed and trained a Crisis Intervention Team ("CIT"). CIT officers receive specialized training in dealing with individuals in crisis and learn to slow down and de-escalate incidents, negotiate with subjects, and respond more flexibly. While there were 680 CIT-trained officers in the DPD in late 2007, there were only 200 CIT-trained officers in 2003, at the end of the period we reviewed.

In only one of the cases we reviewed that involved a person in crisis are we aware that an officer with CIT training responded to the incident. In that particular case, the 911 call stated that the subject of the call was possibly suicidal. The CIT-trained officer, who was the senior member on the scene and in charge of the other officers who responded, did not employ his CIT training in trying to resolve the incident. Rather, he used a tone of voice when asking the subject to surrender that he characterized as “authoritative.” Within two minutes of entering the house, despite the call being a welfare check, the officers had escalated their response to kicking in the door to the bathroom where the subject was hiding. The officers’ response to the known circumstances did not seem to show awareness of the CIT training the senior officer received nor of the central CIT principle of de-escalation.

In three of the five cases where the police knew of the suspect’s state of crisis, the timing of the confrontation with the subject was in the control of the police. Because there was no immediate danger to another person in those three incidents, the police could have employed (but in fact did not employ) de-escalation and other CIT techniques.

Mayor Hickenlooper’s 2003 reforms included a substantial expansion of the CIT program. As stated in Chapter 1, the present CIT program as presently constituted seems exemplary and shows tremendous progress from the responses to individuals in a state of crisis that we saw in the 1999-2003 cases we reviewed.

Summary of Recommendations.

Incident Reviews

- 1. That five sergeants were involved in firing their weapons (four in two separate incidents, each involving the firing of 50 rounds by seven and eight members, respectively) is a matter of some concern and the DPD should examine these instances to determine if sergeants are properly limiting their role to that of supervisors and for appropriate lessons that can be learned.**

Critical Incident Management

- 2. In order to minimize risk, the DPD should ensure that, whenever feasible, a sound plan is devised before action is taken in critical incident situations.**
- 3. The DPD should ensure that officers are properly trained to communicate all pertinent information and, when there are deficiencies in communication, officers should be retrained or, in appropriate circumstances, disciplined.**
- 4. The DPD should seek to ensure that all supervisors are equipped with the requisite skills and knowledge to effectively command their officers whenever a critical incident arises.**
- 5. Supervisors should become involved in critical incidents at the earliest possible stage. Dispatchers should inform a sergeant as soon as any potential critical incident reports are received, and officers should be directed to inform a supervisor without delay whenever they encounter such an incident.**
- 6. Whenever feasible, supervisors should determine the tactical and strategic approaches to be taken to critical incidents, and should direct the actions of involved officers.**
- 7. Supervisors should be held accountable for the performance of the officers under their command whenever a critical incident occurs.**
- 8. Supervisory training should emphasize critical incident training and the Department should ensure that supervisors consistently manage operations according to the sound principles such training promotes.**
- 9. The DPD should ensure that such endangerment is minimized in future operations.**

CONCLUSION

As we noted in the introduction to this Report, the DPD today meets and even exceeds national standards in many areas, making the DPD close to, if not already, a national leader. Yet it was not always so; and up to as little as three or four years ago, as this Report has demonstrated, there was much room for improvement in the quality and thoroughness of internal investigations of deadly force incidents. Since that time, there have been significant changes in personnel who are investigating and reviewing officer-involved shootings. The DPD points out that Internal Affairs personnel have been handpicked to ensure effective investigations and reviews; that there have been substantial advances in technology as well, including laser technology regarding bullet trajectories; that the current DPD administration supports holding crime scenes as long as necessary as opposed to hurrying to release the scene as may have been the case in the past; and that substantial training above and beyond what was previously done has been provided to the Detectives who investigate these incidents since the time covered in the Report.

The combined efforts of the Mayor, the Manager of Safety, the Chief of Police, the Independent Monitor, the COB, and the Denver District Attorney's Office have brought about notable improvements and advances in the DPD. The right people are in the right places to make these positive changes permanent and to continue building a force providing effective, respectful, and accountable policing to all persons in the City and County of Denver.