



**Report to the City of
Pasadena Concerning the
Officer-Involved Shooting of
Kendrec McDade**

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INTRODUCTION

There is probably no more potentially controversial police action than an officer's use of deadly force, particularly a fatal shooting. Some members of the community will remain loyal advocates for the police and will accept and support virtually any use of deadly force by the police. Community members at the opposite end of the spectrum may jump to conclude that the shooting was malicious and will be skeptical of any voiced justification for the officer's conduct as part of a conspiratorial "whitewash" to protect the police. As information from the investigation is collected and becomes publicly available, residents with these different world views will consider that data through those mind sets. Whether one sits on the ends of that continuum of views or with the majority somewhere in the middle, the event is one that will resonate with the public. Because, regardless of how, in the end, one views the event, a life has been lost and the incident will have impacted not only the decedent and his family, but also the officers involved, the police agency and its city, and the larger community.

Police officers are given awesome authority in order to fulfill their public safety duties. This includes the ability and in some cases the obligation under the law to use deadly force to protect themselves or the lives of others. However, along with this authority comes the responsibility to use lethal force only when necessary. To ensure adherence to this principle, police agencies have the weighty responsibility to thoroughly and dispassionately investigate and perform a robust review of incidents in which deadly force is deployed.

Twice in the past five years, the City of Pasadena has experienced fatal shootings, generating controversy each time. The 2009 shooting of Leroy Barnes generated significant angst and concern, particularly when it was learned that initial reports that Mr. Barnes had fired his gun at officers during the incident proved to be inaccurate. As part of the review process, for the first time in its history, the

Pasadena Police Department provided an independent review group with access to the investigative files of the incident, its investigators, and its review process. As a result of that independent review, the community of Pasadena was provided with a public report along with recommendations designed to make officers better equipped and trained to handle future similar events and improve the investigative and review process. The transparency that the City authorized OIR Group to provide resulted in a public record of the shooting, the investigation, officer decision-making, and recommendations that had no precedent in Pasadena. The Pasadena Police Department, moreover, embraced OIR Group's recommended changes in policy, procedure and training that came out of the Barnes¹ incident analysis. The Department agreed to implement almost all of those recommendations.

When on March 24, 2012, the preliminary facts of another officer-involved shooting by Pasadena police officers indicated that Mr. Kendrick McDade, the person fatally shot, was unarmed, the City and Chief of Police reached out to OIR Group and committed to another independent review and public report of the incident. This time, while OIR Group again received full access to investigative materials, attended the criminal investigative debriefing, and was afforded an escorted field visit to the location of the shooting incident, as we detail further below, we were not invited to observe the Review Board session in which key tactical decision making was discussed.

While OIR Group was provided after the fact with the power point presentation used to frame the administrative review discussion, we did not observe the discussion itself or the development of any corrective action coming out of the meeting. Moreover, as detailed below, the Department rejected OIR Group's recommendation to conduct an internal affairs investigation regarding the involved officers' tactical decision-making, including our recommendation to re-interview the involved officers about policy compliance and tactical issues. Despite these

¹ Report to the City of Pasadena Concerning the Officer-Involved Shooting of Leroy Barnes, Jr. (October 2009 by OIR Group), Recommendations 1 through 14.

challenges, we were still able to independently review the investigation and the review process, aided by a lengthy document the Department prepared intending to encapsulate the Review Board discussion. We set out those observations and conclusions here and make recommendations that we hope will provide a basis for a more refined and robust investigative and review process so that the Pasadena Police Department and its officers will be better prepared to deal with future potential deadly threat situations.

With virtually every deadly force incident, there are aspects of the incident itself and the resulting investigation and review in which a Department performs well. There are also learning experiences to be gained from officer decision-making that may have been less than optimal and can be fleshed out during the resulting investigation and review. While the Review Board apparently engaged in some of this introspection during the administrative review and ordered training in various important areas, we are not persuaded that the Department did all that it could to ensure that issues and concerns about the shooting were effectively communicated back to the involved personnel and the Department as a whole. As explained in much greater detail below, we are also concerned that the Department's failure to formally disapprove of the "box in" tactic deployed in this case may create future situations where its officers' safety and the safety of the public may again be compromised should the maneuver be repeated when pursuing a suspect believed to be armed.

The Department concluded that the involved officers did the best they could under "chaotic" circumstances. In our view, it is precisely the "chaotic" circumstances that demand officer restraint and the development of a thoughtful and safe tactical apprehension plan. When police departments stress apprehending suspects consistent with principles of officer safety, there is also generally a reduction in deadly force incidents. In our report, we enumerate at least ten tactical decisions made by the involved officers that were not congruent with principles of officer safety that both may have contributed to a heightened level of fear and caused the driver officer to place himself in an unsafe position so that when Mr. McDade

suddenly turned in his direction, Officer Griffin felt he had no choice but to use deadly force. Consistent with recent California Supreme Court jurisprudence, it is this careful and critical evaluation of officers' decision-making tactics and whether those tactics contributed in any way to the need to use deadly force that the Department must consider during the review process.

We are heartened about the Department's new focus on creating training for its officers regarding the risks of foot pursuits and important considerations designed to keep officers safe. We hope this commitment to training its officers to perform this tactic safely will also cause a revisit of the high risks of using the "box in" technique deployed here against a believed to be armed suspect. The observations and recommendations we offer here are intended to provide ideas we have exported from other law enforcement investigative and review mechanisms that the Pasadena Police Department may wish to consider as it continues in its responsibility to review, learn, and improve from critical incidents.

ASSIGNMENT AND METHODOLOGY

In April 2012, shortly after the March 24, 2012 officer-involved shooting of Mr. McDade, OIR Group met with Pasadena City officials and Chief of Police Phillip Sanchez and agreed to conduct an independent review of the incident. Over the next several weeks, Pasadena Police detectives completed their criminal investigation and submitted it to the District Attorney's office for review. In July 2012, we attended a briefing and review of the results of that investigation presented by the Pasadena Police Department's Criminal Investigations Division to the Department's command staff. OIR Group was also present to observe the subsequent discussion regarding the incident by the Department's senior command staff. Later, at our request, the Department facilitated a night-time visit by OIR Group to the scene of the incident, including where the initial crime occurred, the route traversed by Mr. McDade and the officers, and the location where the shooting occurred. As a result of that visit, we were able to assess lighting conditions similar to those at the time of the shooting.

The Pasadena Police Department ("PPD") provided OIR Group with access to all reports, tape-recorded interviews, videos, photographs, and other documentary evidence in possession of the Department. Unfortunately, unlike the 2009 Leroy Barnes shooting, we were not informed of, so did not attend the presentation of the Department's March 2013 administrative review of the McDade shooting to Department executives, although we were later provided a copy of the Power Point slides used during that presentation. We also received a two-page form documenting the outcome of the Department's Administrative review of each involved officer. [REDACTED]

[REDACTED] After we completed our initial draft of our report in September 2013, PPD prepared a nineteen page document which was forwarded to us in February 2014 which the Department indicated was intended to more completely reflect the discussion and conclusions of the Department's Administrative review that had occurred months before. In April 2014, PPD forwarded another lengthy document in response to our draft report that it asked us to consider before we finalized our report. In May 2014, we met with the Chief for further clarification of issues discussed in the April 2014 document.

Meanwhile, in December 2012, the District Attorney's Office issued its conclusion pursuant to the California Penal Code that the shooting was legally justifiable. Our report leaves to the District Attorney the analysis and determination regarding the reasonableness of the shooting pursuant to the Penal Code. Our objective is rather to evaluate the quality and thoroughness of the Pasadena Police Department's investigation of the incident, the decisions and actions of PPD personnel leading up to, during, and subsequent to the shooting, and the robustness of the post-shooting review conducted by Department executives. We articulate a number of recommendations for the Department's consideration designed to improve PPD's internal investigative and review process so that more effective learning and

guidance can be communicated to its officers and so that the Department and its officers can be better prepared to respond to similar challenges in the field.

SUMMARY OF INCIDENT

On March 24, 2012, Pasadena Police Department Officer Matthew Griffin and Officer Jeffrey Newlen were on patrol in uniform in a marked black and white patrol car. Shortly after 11:00 p.m., they received a radio communication about a robbery that had just occurred with the suspects last seen near the corner of Orange Grove Boulevard and Raymond Avenue. Police dispatch informed the officers that two male suspects had pointed a gun at the victim, taken his backpack, and fled on foot. Dispatch described the individuals as being African-American males, wearing black clothing, and carrying guns.

The involved officers' account of the incident.

Officers Griffin and Newlen later told detectives that they observed one suspect, later identified as Kendrec McDade, at Fair Oaks and Orange Boulevard who matched the description provided by police communications. The man looked in the direction of the police car and appeared to the officers to react immediately by running toward the west side of the street. Officer Griffin saw the man grab the right area of his waistband with his hand as he disappeared behind a building into a small parking lot.

Officers Griffin and Newlen pursued Mr. McDade in their police vehicle as McDade ran through a commercial vehicle access way, coming out on to Sunset Avenue, just north of Orange Grove Boulevard. Officers Griffin and Newlen both later told detectives that they observed Mr. McDade continually clutching his waistband area with his right hand. Officer Griffin told investigators that he verbalized his observations to Officer Newlen to alert him that Mr. McDade may be armed. Officer Griffin told investigators that he took his gun out of his holster and held it in his right hand as he drove the patrol car with his left and proceeded through the narrow access way. The patrol car struck and scraped its side along one of the walls

for a few feet, continuing to follow the path of Mr. McDade through the commercial vehicle access way.

According to the involved officers, Mr. McDade initially ran on Sunset Avenue to Orange Grove Boulevard. A few seconds later, the officers said that they observed Mr. McDade stop, turn quickly, almost fall to the ground, crouch and touch the ground with his left hand, then proceed back toward Sunset Avenue, passing the officers' vehicle. According to the officers' statements to Pasadena detectives, during this maneuver the man continued to hold his right hand to his waistband.

Officer Griffin stopped the patrol car suddenly and put it into reverse. Just as the patrol car stopped momentarily before reversing, Officer Newlen opened his door, jumped out and ran up the sidewalk on the west side of Sunset after the suspect, leaving the passenger door open. Officer Griffin backed the patrol car up a few yards which caused the passenger door to close, then turned north to continue to pursue the suspect up Sunset.

Officer Newlen said that he attempted to close the distance on foot between himself and the suspect but he remained fifteen to twenty yards behind him, by his estimate. Officer Newlen said that he yelled at McDade that it was the police and to stop. Officer Newlen had his gun out of his holster as he ran. He broadcast to the radio dispatcher his position and that he was in foot pursuit.

As the officers were pursuing, one on foot and the other in the car, a PPD helicopter had arrived on scene and attempted to observe the suspect and the pursuit, but the tree canopy over the street was so thick that the helicopter observer could not see the officers or the suspect but only a bobbing, intermittent light moving along the sidewalk. This was later determined to be Officer Newlen's gun-mounted flashlight as he ran after the suspect.

Officer Griffin told investigators that he passed Officer Newlen who was running on the sidewalk. Officer Griffin said that he got in front of the suspect, who was also running on the sidewalk, and hit the brakes. Officer Griffin said that he placed his

car at an angle in front of the suspect. The officer told Pasadena detectives that he intended by this maneuver to position himself where he could cut the suspect off.

According to Officer Griffin, after he turned his vehicle slightly toward where Mr. McDade was running on the sidewalk and stopped the car, he observed McDade turn clockwise, leave the sidewalk and suddenly run directly toward him while he was seated in the police car. Officer Griffin told investigators that believing that Mr. McDade was armed, fearing that McDade was advancing on him, feeling trapped and vulnerable in the driver's seat of the stationary patrol car, and feeling that he was about to be shot, Officer Griffin fired his handgun out the open driver's window four times, striking McDade. Officer Griffin estimated that when he fired, McDade had advanced to within 18-24 inches of the driver's window of the police car. After he fired his first round, Officer Griffin said that he leaned to his right toward the passenger seat in an attempt to seek cover while continuing to fire the remaining rounds.

Officer Newlen said that he was continuing to chase McDade and was approaching the patrol car when he saw McDade run up to the driver's door of the patrol car, at which point he heard a gunshot and thought his partner was being shot at. Newlen said he then stopped approximately fifteen yards south and began to draw down on McDade. Officer Newlen said he observed Mr. McDade start to walk toward the back of the car and then turn towards him. Officer Newlen indicated that he believed Mr. McDade was now taking a tactical position and preparing to shoot him. Officer Newlen stated that he heard a second gunshot, saw a muzzle flash, and saw McDade looking at him. Officer Newlen said that in fear for his life, he fired his handgun four times, at which time McDade fell to the ground on his side.²

After Officer Newlen fired the four rounds, Officer Griffin opened the driver's door and got out of the car. He kneeled next to Mr. McDade, pressed his knee against the suspect's body, pointed his gun at him with one hand and tried to pull the suspect's

² Neither officer reported saying anything to Mr. McDade or hearing anything from McDade prior to their decision to use deadly force.

hands back with the other in order to handcuff them. As he did this, the patrol car began to roll backwards slowly because Officer Griffin had neglected to place the car's transmission in park. The open driver door made contact with Officer Griffin's back and began to push him. Seeing this, Officer Newlen jumped into the driver's seat and put the car in park. As other officers arrived, Officer Griffin holstered his gun and grasped both of the suspect's hands. Officer Newlen placed handcuffs on them.

Officer Newlen called in emergency medical assistance and the Pasadena Fire unit arrived three minutes later. Mr. McDade was transported to a nearby hospital and succumbed to his injuries during emergency surgery a short time later.

No gun was found at the scene or on Mr. McDade's person.

Time-Line of Events

- 10:53:30 pm Mr. McDade and another individual commit grand theft.
- 11:00:24 pm Mr. McDade and the other individual flee from the initial crime location.
- 11:04:10 pm The victim of the initial crime calls 911 and reports an armed robbery to police dispatch.
- 11:04:49 pm Dispatch broadcasts the call of an armed robber to Officers Griffin and Newlen.
- 11:05:24 pm PPD helicopter unit acknowledges receipt of the call.
- 11:05:39 pm Dispatch assigns another PPD officer to assist on the call.
- 11:06:12 pm PPD helicopter unit acknowledges that it has arrived in the area.
- 11:06:30 pm A fourth PPD officer acknowledges that call and indicates he is en route.
- 11:07:17 pm Officer Newlen broadcasts he is in foot pursuit north on Sunset Avenue.
- 11:08:02 pm Officer Newlen broadcasts that there were shots fired, the suspect is down, and requests a rescue ambulance to respond to the location.
- 11:09:23 pm Pasadena Fire Department dispatch enters a call for immediate response for a gunshot wound victim.

11:12:47 pm Pasadena Fire Department indicates arrival at the location and initiation of medical assistance.

11:22:44 pm Pasadena Fire Department begin transport of Mr. McDade to hospital for further medical treatment.

Autopsy Results

Three days after the shooting, an autopsy was performed on Mr. McDade by a medical examiner of the County Coroner's Office. The medical examiner determined that seven of the eight bullets fired by the two officers hit Mr. McDade. Five of the entry wounds were in the chest, front of the abdomen and front surface of the arm and two entry wounds were in the left side hip area. Of the two bullets that remained lodged in the body, one was from Officer Griffin's gun and the other was from Officer Newlen's gun. The medical examiner was able to determine this because the officers used different caliber guns. The medical examiner concluded that each of the wounds induced by these two bullets was potentially fatal. There was no evidence to suggest that any of the bullets had been fired at Mr. McDade from less than a foot or two away, that is, no gunpowder residue or stippling was observed on the deceased's skin or clothes.

THE PPD'S CRIMINAL INVESTIGATION

PPD Criminal Investigation of Theft and False Statements

On the night of March 24, PPD detectives from the Criminal Investigations Division ("CID") arrived at the scene and began their investigation. At the outset, the CID detectives were fulfilling a dual role – investigating the criminal case of the alleged robbery of a laptop computer from a patron frequenting a taco truck and criminally investigating whether the two officers who fired their guns had a legal basis for using deadly force on Kendrec McDade. As a result of information learned during the investigation, detectives ended up investigating a third matter involving whether the theft victim made false statements to dispatch when he reported that he had been robbed by men with guns.

The investigation by the detectives proceeded swiftly and extensively at the outset, including interviews of witness police officers, collection of physical evidence at the scene, canvassing for and interviews of civilian witnesses, collection and viewing of surveillance video from the restaurant building and in-car MAV videos from some of the patrol vehicles, and, a few days later, observation of the autopsy examination. On the night of the incident, detectives located and viewed videotape from surveillance cameras inside and outside the restaurant in front of which the taco truck was parked. Detectives eventually learned that the victim who called 911 had been at the taco truck getting food when he saw two suspects running away from his parked car carrying his backpack.

Detectives also interviewed a juvenile suspect they believed had been involved with Mr. McDade in the theft. Detectives eventually learned that Mr. McDade and the juvenile had been together in the vicinity of the taco truck. The juvenile then walked into the restaurant and opened a cash register but there was no money in the till. During this activity, Mr. McDade acted as a lookout, first inside and then outside the restaurant. Mr. McDade eventually re-joined the juvenile out in front of the restaurant.

A few minutes later, Mr. McDade and the juvenile observed a man leave his parked car behind the taco truck and walk a short distance to order food from the taco truck. Mr. McDade and the juvenile then looked inside the car and observed a backpack and a laptop computer in the back seat. Finding the car unlocked, Mr. McDade and the juvenile opened a back door and picked up the backpack. The owner glanced back at his car, noticed the individuals come out of his car and yelled at them to stop. Mr. McDade and the juvenile began to run with the backpack. After a block, they split up, both of them passing in and then out of the field of one of the restaurant's surveillance video cameras.

The man called 911 and said that two individuals had just stolen his backpack and when he yelled at them, one of them had put a gun in his face. When the 911 operator asked him further questions, he then stated that they both had guns and

one had run west down Orange Grove, the large street where the taco truck was parked; the other had run away on Raymond, a nearby cross street. He described the robbers as young African-American males, tall and thin, wearing black sweaters, black hats, and black pants.

When responding officers questioned the man later that night about the particulars of the crime, he described the two suspects in much greater detail. He said that after he told one of the suspects to "leave his stuff alone", the suspect stopped and turned at which point he observed the muzzle end of a silver gun in the suspect's right hand. The suspect then grabbed the laptop and ran away on Orange Grove. The man called 911 and followed the suspects in his vehicle. The man said he observed and then lost the suspects various times as they ran through the neighborhood. During that interview, the victim did not mention a second gun, nor did he say the gun had ever been pointed at him.

In a follow up interview with detectives the next day, the theft victim stated that he thought he had seen a gun but was not positive. The detectives re-interviewed the theft victim the following day, sought more clarity about the gun, and he eventually admitted that he had seen no gun at all but wanted the police to respond quickly and thought that they would do so if he mentioned a gun. Four days after the shooting, Pasadena Police detectives arrested the man for involuntary manslaughter for giving false information to the emergency operator that contributed to the death of Mr. McDade. The Police Department averred that when the man provided false information that he had been the victim of an armed robbery, it caused officers to feel a heightened sense of danger from the suspects which then contributed to the decision to use deadly force, resulting in the death of Mr. McDade. The District Attorney's Office evaluated the case and eventually announced in October of 2012 that they would not file a manslaughter charge against the theft victim.

The Pasadena Police Department then submitted the case against the theft victim to the Pasadena City Prosecutor for consideration of misdemeanor charges. In March 2013, the City Prosecutor charged the theft victim with falsely reporting a criminal

offense, reporting an emergency knowing the report was false and delaying or obstructing a peace officer. The theft victim pleaded guilty to the false reporting charges and was sentenced in June 2013 to ninety days in County Jail, ninety days of community service, payment of restitution to the Pasadena Police Department and three years of probation.

The juvenile who participated in the crime with Mr. McDade was charged by the district attorney with two felony counts of commercial burglary, a felony count of grand theft and one misdemeanor count of failing to register as a gang member. He was sentenced to six months of juvenile camp.

PPD Detective Criminal Investigation of Officer-Involved Shooting

Meanwhile, PPD detectives completed their investigation of the officer-involved shooting and presented their file to the District Attorney's Office for review. Except as noted below, the investigation was generally thorough in most areas. Other than a few exceptions detailed below, the physical evidence was well documented. There was an extensive and well-documented neighborhood canvass for witnesses to the incident. The interviews and incident reports by responding officers were comprehensive.³ The interviews of the two officers who used deadly force were also relatively lengthy and detailed.⁴

³ In our Barnes report, we recommended that the interviewers routinely use diagrams to obtain a permanent account of the sequential positioning of involved personnel and civilians, (see OIR Barnes Report, Recommendation No. 4). PPD informed us that in the McDade investigation, GPS information was pulled from portable devices and downloaded immediately. That information was used during the investigative process. The investigation also addressed our recommendation that there be a record indicating sequential positioning of involved personnel and civilians. Moreover, in response to our Barnes' Report, Recommendation No. 5, the Grossman/Lewinski force science construct was eliminated as a resource by PPD and thus not used during the McDade investigation or review. In response to our Barnes' Report, Recommendation No. 7 that PPD provide timely and accurate information about the shooting to the public, PPD indicated that within three hours of the shooting, the media and community stakeholders were provided preliminary information concerning the incident. In response to our Barnes' Report, Recommendation No. 9, that officer-involved shooting investigations are preserved at least throughout the career of the officer and that the administrative review should examine past officer-involved shootings or other relevant history of involved officers to identify any commonalities of decision making, PPD indicated that the investigative file of the McDade shooting will be retained for the duration of the officers' career barring any court rulings or procedures that hold contrary and [REDACTED]

OIR GROUP REVIEW OF CRIMINAL INVESTIGATION OF OFFICER-INVOLVED SHOOTING

PPD's training and policy compliance experts provided no input at the incident scene.

While the interviews of the involved officers explored many aspects of the incident that led up to the shooting, the detectives did not delve into areas of tactics and training. This is customary for an officer-involved shooting criminal investigation because it is focused on the legality of the use of deadly force, but it leaves the Department without first-hand knowledge of the tactical decision-making and intent of the officers and hampers its ability to derive useful lessons and appropriate corrective actions or training from the incident. Early participation by Internal Affairs or Training personnel in a parallel post-shooting investigation can address this deficiency.

In this case however, the Pasadena Police Department did not call either type of expert to the scene or involve them in the initial investigation. This approach denies the Department experts on tactics and field operations policies the opportunity to observe the scene and evaluate the evidence first hand and early on. In our experience, every use of lethal force by a police agency provides a potentially valuable window into how well officers are employing the Department's training and policies, whether they are well understood by field personnel, and whether the

██████████ With regard to our Barnes' Report Recommendation No. 14 that the Department develop protocols that provide a mechanism to carefully assess the status and assignment of officers involved in officer-involved shootings, PPD reports that a deliberate process for doing so had been devised. The Barnes' Report, Recommendation No. 3 regarding promoting cooperation of witnesses did not present itself in McDade. With regard to our remaining Barnes' Report recommendations, we will address the degree to which PPD accepted or rejected our recommendations as the issues arise in this report.

⁴ PPD informed us that in response to our concerns in the Barnes' report and recommendations regarding the deleterious consequences of leading questions and the apparent failure to identify their existence by report reviewing supervisors, (see OIR Barnes Report, Recommendation No. 2), PPD detectives were provided interview skill training by the Los Angeles District Attorney's Office. Further, the Department informed us that during the McDade detective investigation, increased supervisory oversight was provided, supervisors routinely met, conferenced and were briefed regarding interviews of witnesses, and one supervisor was tasked with the final review and approval of the investigative report. This attention to our concerns articulated in our Barnes report had apparent beneficial results; we did not see the use of leading questions in the McDade investigation.

Department should change its approach regarding training and policies, based on the analysis of the deadly force incident. It is a preferable practice to use the training and/or policy-compliance experts of the Department to assist in developing a factual record from which to make such assessments.

We appreciate that PPD has modified their protocols so that the Training Unit is notified of officer-involved shootings and placed on standby. According to PPD, the Training Unit is now considered “part and parcel” to the investigative team and the review process. That being said in the Barnes review, we recommended that training and policy experts be part of the rollout team that viewed the initial crime scene⁵ and we renew that recommendation here.

Recommendation One: Because in McDade, the Department’s training personnel were not called to roll out to the crime scene, PPD should again consider revising protocols to ensure that training personnel are part of the rollout team for officer-involved shootings.

Officers Griffin and Newlen were provided access to video and audio prior to being interviewed denying PPD’s ability to obtain a pure statement of the officers’ observations.

Prior to being interviewed, the involved officers were allowed to view dashboard video of several patrol cars as they responded to the scene after the shooting as well as radio transmissions made by Pasadena personnel the night of the incident. In the Barnes report, we recommended that the Department develop protocols on whether, before being interviewed involved personnel would be shown video materials relating to the incident. Our suggestion was that the Department should first interview the involved officers, then provide the officers the opportunity to view the video evidence, and conduct a follow-up interview asking the officers if the video information refreshed their recollection of the incident.⁶ In the McDade shooting, however, the Department provided both video and audio evidence to the officers prior to obtaining any interview from them.

⁵ See Barnes Report, Recommendation Number 1.

⁶ See Barnes Report, Recommendation No. 6.

Viewing audio tapes or video footage before being interviewed is likely to distort pure recall either consciously or subconsciously. Studies by experts in witness memory have repeatedly established that subjecting witnesses to external evidence can cause them to supplant or modify what they actually recall with what they see from the video evidence. As a result, allowing personnel to view a video or listen to audio prior to interviewing the involved officers eliminates the ability to obtain a pure unvarnished account of the account from them. A view and listen first policy also can create the impression that the Department is attempting to influence the officers' accounts so that they can be tailored to the audio and video evidence that has already been gathered. Such an impression will reduce confidence by some in the Department's ability to objectively investigate deadly force incidents. Finally, a view and listen first policy is not consistent with current investigative practices PPD employs on a daily basis. For example, bank employee victims are not shown surveillance videos of a robbery prior to being interviewed.

There was no police vehicle video of the shooting itself in this incident, but the activated cameras of other arriving patrol vehicles depict the scene immediately after Mr. McDade collapsed on the ground and was handcuffed. Thus, in this case, to the degree that the video and audio information provided the involved officers information about the incident, their recollection had the potential of being influenced by exposure to that information. Moreover, the information provided the officer was not produced from their vantage point and thus impacts the officers' psyche with a rendition of the incident from a position that they would not have been afforded at the time.

As we stated in our Barnes' report, the better approach would have been to obtain a pure rendition of the incident from the involved officers. At that time, the video and audio evidence could have been presented to them and if those recordings refreshed the officers' recollection, they would have the opportunity to supplement their responses with the additional recollection. This technique allows the collection of an unvarnished recollection from the involved officers yet affords the opportunity for that memory to be refreshed by external evidence.

However, PPD was precluded from obtaining a pure statement from the involved officers in the McDade shooting investigation because since the issuance of our Barnes' recommendation, the Department in 2010 entered into an agreement with the Pasadena Police Officers' Association that requires the showing of any recordings to an officer prior to that officer being interviewed.

The deal struck by the Department and the Police Officer's Association has resulted in a protocol that may impact the accuracy of a police officer's recollection and events and has the potential to significantly erode confidence in the integrity of critical incident investigations. In a public report announcing the implementation of a Los Angeles Sheriff's Department policy that required the obtaining of a pure statement by a deputy prior to reviewing video evidence, we referenced the public report written in the aftermath of the BART Police Department shooting of train passenger Oscar Grant in the Fruitvale BART Station. The authors stated:

Officers should not view video of an incident prior to being interviewed. Allowing officers to view video prior to an interview allows them to either subconsciously fill in the blanks where there are no memories of the incident or preplan for alibis for substandard conduct. Either way, allowing officers to view video of the event prior to the interview erodes the public's faith in the process and unnecessarily impacts the investigation.⁷

Similar concerns were raised by the public in Fullerton following the in-custody death of Kelly Thomas when it was learned that the involved officers had been allowed to view a video of the incident prior to submitting their reports. At the time, the Fullerton Police Department's acting Chief acknowledged that the decision to allow the involved officers to view the video first compromised, or at least damaged, the public's trust and confidence in the process.⁸ Moreover, our continuing review of the available research indicates ample evidence that being exposed to additional

⁷ *Public Report: Review of BART PD Policies, Practices and Procedures: New Year's Day 2009*, submitted to BART by Meyers, Nave Professional Law Corporation, at p. 5.
http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf

⁸ Following the Kelly Thomas incident, Fullerton PD created a policy that requires that when an officer's conduct is being reviewed, the officer is to submit to an interview or prepare a report prior to reviewing a video or audio recording of the event.

information than what was actually experienced (such as seeing the action from a different angle or being able to hear sounds that may have been out of earshot from the officer) can alter memory of the event. For these reasons, when the conduct of officers is being reviewed, investigative protocols should strive to obtain pure statements from involved officers rather than statements impacted by prior exposure to video or audio tapes.⁹

Almost thirty years ago, the Pasadena Police Department wrestled with its Peace Officers' Association regarding a similar issue. In that case, the Association demanded that the Department provide an officer notes of an interview of a fellow officer before interviewing that officer about his conduct. The Department refused to do so and in a landmark California Supreme Court decision, the Court found that the law did not require the Department to do so.¹⁰ As aptly stated by the Court:

Disclosure before interrogation might color the recollection of the person to be questioned or lead that person to conform his or her version of an event to that given by witnesses already questioned.

The Court concluded that providing external evidence to a police officer prior to questioning would be contrary to sound investigative practices. It would have been preferable had the Pasadena Police Department considered the Court's wisdom before committing to a similar investigative practice that requires that the Department preview evidence with an officer before interviewing the officer.¹¹

Recommendation Two: Pasadena PD and the City should revisit the current Letter of Agreement with the Pasadena Peace Officers Association requiring the

⁹ The Department cites to a 2002 IACP report on video evidence and best practices, but we have reviewed that report and there is no discussion about the potential erosion of public trust with protocols that allow involved officers to preview videos of shootings before being interviewed nor about subconscious or conscious contamination of the officers' memory as a result of pre-exposure. To the degree that the IACP report encourages officers to review recorded evidence when preparing reports, we concur so long as it pertains to the conduct of another.

¹⁰ See *Pasadena Police Officers Assn. v. City of Pasadena*, 51 Cal. 3d 564 (1990)

¹¹ To be sure, and unfortunately, other agencies have also agreed to allow officers to preview video evidence before being required to be interviewed. For example, in order to obtain agreement from its union to install in-car videos in patrol vehicles, the Los Angeles Police Department entered into an MOU with the union to allow the officers to preview the video before being interviewed.

Department to preview recorded evidence with officers prior to being interviewed about officer-involved shootings (as they did in the McDade case) and should strive to develop protocols that would prevent officers from previewing recorded evidence prior to their interviews.

Investigators prudently obtained a search warrant for the contents of Mr. McDade's cell phone.

Mr. McDade's cell phone was retrieved at the crime scene. However, instead of immediately viewing any data or photographs on the cell phone, Pasadena PD sought and obtained a search warrant. Such use of judicial process is consistent with best police practices and the law, particularly in light of a recent Supreme Court ruling indicating that peace officers need obtain a warrant prior to accessing cell phone information.¹²

PPD conducted an extensive canvass for witnesses.

Pasadena PD extended numerous resources immediately after the shooting and conducted an extensive canvass for scene witnesses. While the results of that canvass produced no eyewitnesses to the shooting, the Department should be credited with a thorough investigation designed to identify potential neighborhood witnesses.

Instead of attempting to conduct in-person interviews of all civilian witnesses, the PPD investigation relied on telephonic interviews of some witnesses.

A few weeks after the shooting, an individual called into the Pasadena Police Department indicating that he had been a witness to part of the event involving Mr. McDade and the involved police officers. In a recorded telephonic interview, the witness indicated that he had seen a black person run fast followed by a responding police car driving quickly with no emergency equipment or headlights. At some point, the witness said the passenger door of the police car came open and he saw the police car go briefly in reverse.

Telephonic interviews are necessarily limited in that the interviewer cannot ask the witness to sketch diagrams of movement or demonstrate body movements or

¹² See *Riley v. California*, No. 13-132 (June 25, 2014)

postures with his own body. Similarly, the interviewer cannot show diagrams or photographs to a witness to explain questions or stimulate recall. This witness' observations were particularly important in that he was perhaps one of two witnesses besides the involved officers who were identified as witnessing Mr. McDade running. As discussed further below, during the telephonic interview, while the witness was asked whether he saw the individual on foot look back, this witness was not asked whether he observed Mr. McDade holding his waistband while running as the officers described.

The use of telephonic interviews should be discouraged. If circumstances make an in-person interview impracticable, the investigative file should articulate those reasons. There were no such reasons articulated in the CID detectives' file for interviewing the witness over the phone and valuable insight and evidence might not have been retrieved as a result of the interview being conducted telephonically.¹³

When we raised these issues, the Department said that the handling detective was initially only provided the telephone number of a potential witness. Because when he talked to the witness he learned that he did not see the shooting and because the witness chose to be interviewed telephonically, the detective said he interviewed him over the phone. The Department said that it was their belief that had the witness observed any activity beyond Mr. McDade running a short distance and the officers pursuing him in their vehicle, it may have prompted a more detailed interview.

The Department's response misses our point. It is not only witnesses to the shooting incident that are potentially important to the investigation. In this case, according to the involved officers, the way in which Mr. McDade was running and holding his waistband was important to their belief that he was armed. This witness, if asked, could have potentially corroborated or refuted this observation

¹³ The civilian witness' spouse, who was present with the witness at the time was also interviewed over the phone.

made by the officers. There was no evidence in the file or during the recorded interview to indicate that the witness would have refused an in person interview request.¹⁴

Recommendation Three: To avoid the use of telephonic interviews as occurred in the McDade case, PPD should develop protocols discouraging the use of telephonic interviews in officer-involved shooting investigations. When in-person interviews prove to be impracticable, the investigative file should explain why.

The PPD investigation failed to fully examine whether other witnesses observations corroborated the involved officers' version of events.

According to the investigative report, when the involved officers first observed Mr. McDade, they almost immediately believed he was armed. Part of this knowledge stemmed from information from the 911 caller who reported that the two persons who had robbed him possessed handguns. In addition, both officers indicated that when they observed Mr. McDade, they saw him repeatedly reach for his waistband, as if he was holding a firearm there.

However, besides obtaining statements from the two involved officers, PPD did not pursue additional sources of evidence to determine whether this observation reported by the two officers could be corroborated or might be contradicted. The video that shows the two individuals running from the restaurant where the theft occurred has insufficient clarity to discern whether Mr. McDade was clutching his waistband at that point. While the victim of the theft was interviewed extensively, and eventually admitted that he falsely reported that he saw the two suspects with weapons, he was not asked whether during the time he followed and observed Mr. McDade running he ever saw him reaching for his waistband or holding something in his waistband area.

In addition, as noted above, despite the fact that another civilian witness told detectives during a telephonic interview that he had observed Mr. McDade running

¹⁴ In fact, according to the witness, an attorney for the decedent's family had requested him to participate in an in-person interview at the location where he made his observations. The witness said rather than participate in that interview, he thought it would be better to inform the police of his observations.

away, the witness was not asked what the suspect was doing with his hands or whether he ever saw him reaching for his waistband as the officers had reported. As a result, the only evidence that was collected during the criminal investigation that during the chase Mr. McDade was reaching for his waistband as if armed comes from the detective interview statements of the two involved officers.

Recommendation Four: Because in the McDade case, despite our suggestions, witnesses were not asked questions that could have supported or contradicted involved officers' version of events, Pasadena PD should design investigative protocols that would ensure that witnesses were questioned about observations that could do so.

PPD'S DECISION NOT TO CONDUCT AN ADMINISTRATIVE INVESTIGATION OF THE SHOOTING RESULTED IN AN INCOMPLETE RECORD OF THE INCIDENT UPON WHICH TO BASE AN ADMINISTRATIVE REVIEW.

Police officers are authorized to use deadly force and obligated to do so when necessary to protect their lives or the lives of others. Wedded with this awesome authority is the law enforcement agency's responsibility to ensure that any deadly force incident is carefully examined through a number of perspectives. First, the incident must be investigated and the final report forwarded to the District Attorney in order for her to determine whether the shooting was in compliance with the Penal Code. However, the factual inquiry should not end there.

An administrative investigation and review should also be conducted to go well beyond the legality of the shooting to determine whether or not the shooting complied with the policies and procedures of the employing agency. In addition, the administrative phase should examine tactical decision-making by involved officers and assess whether those decisions comported with the expectations of the Department. In cases where the performance of involved officers was significantly below those expectations, the agency should determine what type of Departmental response is appropriate, i.e., whether to incorporate discipline, counseling, or briefing tools. Finally, the review should consider whether the incident suggests a need to change current policies and procedures, additional training at the involved-officer level or the Department as a whole, and whether there were supervision or

equipment issues. The review process should also evaluate the fact gathering from the time the incident occurred throughout the investigative process to assess the quality of the investigations.

In this case, after the District Attorney's Office issued its letter of opinion that the involved officers' use of deadly force had not violated the California Penal Code, PPD turned to the administrative phase of the incident. However, rather than conduct re-interviews of the involved officers to gain a fuller understanding of their tactics and decision making as was undertaken in the Barnes shooting, PPD decided that the facts already gathered during the criminal investigation would suffice for the administrative review. In fact, PPD determined that no additional fact-finding whatsoever was necessary during the administrative phase of its review.

In order to conduct a robust administrative review of a critical incident such as an officer-involved shooting, it necessarily requires that the involved officers be questioned about tactical decision making, an area of inquiry that is not usually pursued in depth during the criminal investigation. Consistent with this experience, our review of the CID interviews of the involved officers in this incident shows incomplete questioning of the officers regarding their tactics and thus insufficient fact finding from which to conduct an administrative assessment. As a result, after we had reviewed the criminal investigation and presentation, and at PPD's request, we submitted a written outline recommending additional areas of inquiry to the Department for follow up during the administrative phase of the investigation. Rather than pursue any of our lines of recommended inquiry, PPD chose instead to simply repackage the information gained during the criminal investigation and to rely entirely on that information for its administrative review.

Among the areas of inquiry recommended by OIR Group as topics for follow-up interviews were the following:

- OIR Group suggested that the involved officers be asked whether they intentionally responded to the radio call without lights and siren. If the officers had activated their emergency equipment, this

in turn would have automatically activated the patrol car's video equipment. At least part of the incident would have likely been captured by the mobile activated video equipment. While PPD policy allows officers to use considerable discretion in deciding whether their lights and siren need to be activated, it was nevertheless important for the Department to learn from the officers whether they believed they had enough information from dispatch, their own observations of Mr. McDade, their belief that he was armed and surrounding conditions to determine that this was a potentially life threatening situation either requiring or suggesting activation of emergency equipment. Furthermore, follow up questions could have determined whether the officers considered manually activating the in-car video camera without lights and siren.

- OIR Group suggested asking Officer Newlen whether he intended to split from his partner to go into foot pursuit or believed his partner would follow on foot, whether he intended to close the distance with the suspect he was chasing, and what his understanding of optimal tactics were when in foot pursuit of a suspect he believed to be armed.
- OIR Group also suggested that Officer Griffin be asked if, when he drove past the suspect and cut him off, he considered the vulnerable position he and his partner might be in if the suspect did something other than stop or run westward. We also suggested related questions concerning cross-fire and background, that is, whether either officer anticipated the problems of pursuing in such a way as to place the suspect between them and then have to potentially point their weapons in one another's direction.

In explaining why these and other areas of inquiry recommended by OIR Group were not pursued, the Department indicated that, in its view, the matters had been sufficiently covered in the criminal investigation or were "speculative." Additionally, the Department determined that some answers about officer decision-making could be deduced from information already collected and others were addressed by the written policies themselves.

In our view, it is unfair to the officers to "deduce" answers that the officers have not clearly provided and citing to the policy does not provide the reviewer any information about the officers' mind set about how tactical decisions within the incident transpired. These areas of inquiry would have helped the Department evaluate those crucial tactical decisions leading up to the shooting and provide a better basis to determine whether corrective action – training, discipline or policy changes – was necessary. Indeed, the Department's Administrative Memorandum candidly acknowledges this with regard to one point. It states that, rather than make assumptions about why officers Newlen and Griffin failed to activate their in-car MAV video during their pursuit of Mr. McDade, they should have been asked about it during an administrative interview. Unfortunately, there was no administrative interview of the officers with which to do so.

Because as noted above, several crucial lines of questioning were not pursued of two civilian witnesses during the detective investigation, OIR Group also suggested that the additional questions be asked of those witnesses about their observations, namely whether they had seen (as the involved officers reported) Mr. McDade reach for his waistband while running away. The Department also declined to follow up with the civilian witnesses. Potential sources of information were not pursued because of the Department's decision not to supplement the criminal investigation with additional inquiry.

In sum, in contrast to the Barnes shooting, in deciding in this case not to follow up with the involved officers and civilian witnesses and pursue the additional investigative topics, PPD relied solely on the information gathered during the

criminal investigation from which to assess administrative issues. For the reasons set out above and more fully below, that decision prevented PPD from learning additional information that was important in assessing the involved officers' skills, perceptions and tactical decision making. The decision not to conduct additional inquiry resulted in an administrative review not fully equipped with all available facts and prevented a comprehensive and fact-based evaluation of the officers' tactical decision-making.

When we presented these concerns to the Department about the failure to conduct an administrative investigation, PPD disputed the assertion. According to the Department, the administrative use of force review examined all facts known at the time and afforded executive staff a complete and factual record of the events. The Department conceded that additional questions could have been asked of the officers during the administrative review regarding why some tactics were utilized but it maintained that the factual record of the incident was complete.¹⁵

The Department's response misses our point that if there are gaps in the record with regard to the involved officers' tactical decision-making, which there are, then the factual record of the incident was not complete. As the Department admits, if the question is not posed directly to the officer about a decision he made, the review entity must assume what the officer was thinking in order to consider the decision. Robust reviews are not based on assumptions but on direct responses about mind set from the participants involved. In this incident, the Department made a conscious decision not to explore those mindsets further during the administrative phase and to rely entirely on what had been collected during the criminal investigation.

Recommendation Five: Because in the McDade case the Department failed to conduct an administrative investigation, the Department should develop protocols requiring that in every use of deadly force incident, Pasadena PD should conduct an administrative investigation that, at a minimum, includes follow-up interviews of the involved officers regarding tactical decision-making

¹⁵ Additional potential questions that were not asked was whether either officer considered warning Mr. McDade that they were about to use deadly force if he did not stop his perceived aggressive actions.

and collects sufficient additional evidence so that the executive team may identify and assess performance, supervision and equipment issues based on the involved officers' articulated mindset.

PPD'S ADMINISTRATIVE REVIEW OF THE SHOOTING

As noted above, OIR Group attended the detective's post-briefing of the McDade criminal shooting investigation presented to command staff. We found that the Detective who conducted the post-briefing had a strong command of the facts of the investigation and used exhibits, video evidence, and diagrams effectively to set out the facts developed during the criminal investigation.

Following the detective's investigation and post-briefing of an officer-involved shooting, PPD conducts an administrative review focusing on the performance of involved officers in relation to departmental policies, procedures and training. According to documents recently prepared by PPD for OIR Group, the first time the Department convened a Use of Force Review Board was in 1994. OIR Group's first experience with the Department's administrative review process occurred during its review of the February 2009 officer-involved shooting of Leroy Barnes.

Our presence during the administrative review and subsequent executive review of that shooting was crucial to our ability to gauge the robustness with which Department leaders tackled investigative, tactical, and collateral issues regarding the incident and subsequent investigations. As a result of our attendance, we were able to report to Pasadena's public that the administrative presentation by the Department's Professional Standards unit was extensive and detailed and that the subsequent executive review resulted in PPD command staff bringing additional issues to the discussion resulting in a healthy and wide ranging exchange of perspectives. While we had recommendations on how both the administrative presentation and subsequent executive review could be improved, we were able to commend the Department on a robust and healthy process intended to promote issue identification and learning.

Because we were not informed about the administrative review for the Kendrec McDade shooting until after it occurred, we have no first-hand knowledge regarding the breadth of the presentation or the robustness of the executive review. Based on our past experience of being invited to the Barnes administrative review and our contractual responsibility with the City to participate “in any meetings by executives of the Pasadena Police Department involving the formal administrative review of the shooting”, we were expecting to be in attendance at such meetings. After we learned that the review had occurred without our knowledge, we were informed by PPD that a concern had been articulated that having us in attendance at the review might have hampered a “candid discussion” from Department participants including the training cadre and that our not being present allowed participants to “feel free to discuss issues in an open and honest manner to foster constructive dialogue and readily identify lessons learned”.

While we certainly recognize how attendance by outside individuals has the theoretical potential to impact the dynamic of any meeting where sensitive issues are being discussed, it was not our experience that our presence at the Barnes shooting review chilled the discussion among PPD personnel at that meeting nor did we detect a lack of candor during the criminal investigation briefing and review in this case. Moreover, we have participated in countless administrative reviews of officer-involved shootings conducted by the Los Angeles County Sheriff's Department and other law enforcement agencies and have never received feedback that our presence at the meeting chilled the discussion or compromised police executives' ability to lead a candid discussion of the incident.

While OIR was not invited to the McDade shooting administrative review, after the review occurred PPD did forward a copy of the power point presentation that was presented at the administrative review. The power point presentation contained a recitation of some of the salient facts collected during the detective investigation but there was scant evidence from the slides themselves that tactical decision-making was robustly discussed during the administrative review.

After the administrative review had been concluded, we also received a copy of the closing memoranda prepared after the session. While the brief memoranda indicated that "clarifying questions" were asked at the administrative review, and findings and recommendations were presented, there was no further information about the nature of the questions or the findings and recommendations that were presented. The memorandum also indicated that the review found [REDACTED] [REDACTED] and that the matter was referred to the training unit for examination of driving, mobile activated video protocols and functionality for policy considerations.

In subsequent correspondence to OIR Group, the Department indicated that the review board had considered the issues identified in our additional list of questions which focused on tactics, patrol vehicle operation, radio communication and equipment and had determined that the majority of the topics had been addressed in the criminal investigation presentation or in the investigative file. [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Finally, the Department indicated that it would continue to examine driving protocols, mobile audio and video recordings, vehicle and foot pursuit, and use of force policies and had identified a need for new mobile audio video technology.

Since we were not present at the administrative review and because the materials initially provided to us were general and conclusory regarding the review, we informed PPD in our initial draft report that we could not assess the rigor of the discussion at the administrative review or the degree to which the review addressed tactical decision-making and other administrative issues identified by OIR Group. We further wrote that, because of gaps in the fact gathering process, any administrative review would have trouble addressing issues like the officers' mindset during the critical incident.

We did note that, to the Department's credit, even prior to the administrative review, the Department had sent the involved officers for additional training. With regard to the Department's representation that it would continue to systemically examine issues presented as a result of the incident, without a more detailed description of those issues and the development of a more specific written action plan, OIR Group noted that it was unable to assess the likelihood of targeted systemic reform and learning coming out of the review of the incident.

After we forwarded our initial draft to PPD setting out these concerns, the Department then prepared and sent to us a nineteen page document (hereinafter referred to as the Administrative Memorandum) that was intended to capture the discussion and results of the administrative review that had been held months before. Because it was not contemporaneous with the presentation, the PPD writer was forced to rely on notes and recollections of participants who attended the meeting. And while the document cannot substitute for our actual presence at the review and our observation of the interplay between the Review Board attendees, it did provide significantly more information about the issues addressed by Department leaders than had initially been provided.

More importantly, besides serving as a vehicle that helped us gain additional insight into the breadth of PPD's review, the Department has informed us that they view the Administrative Memorandum as a template and will henceforward produce a similar document after the administrative review of each officer-involved shooting. It is highly constructive for Department leaders to create a robust written product that memorializes the discussion, determinations, and action plans of the Review Board and we commend PPD for committing to this format. Such reports should be timely completed after each administrative review.

As a result of the preparation of the Administrative Memorandum, we were also able to more easily assess the degree to which our recommendations in the Barnes report were considered and implemented. For example, in the Barnes report, OIR Group recommended that the administrative presentation to command staff

“initiate” identification of tactical issues.¹⁶ While the power point presentation that we reviewed did not identify tactical issues on its face, the Administrative Memorandum indicated, as detailed below, that a number of tactical issues became the topic of the Executive Review discussion. With regard to OIR Group’s recommendations in the Barnes report that training staff be involved in the identification of those tactical issues¹⁷, the Administrative Memorandum documented that the Department’s training staff was present and participated in the Executive Review discussion, in addition to designing and implementing post-incident police officer training involving shooting from vehicles and tactical decision making. Moreover, the Administrative Memorandum expressly noted that consistent with our Barnes recommendation,¹⁸ each member of the review team was provided access to the officer-involved shooting investigative file prior to the executive review.

Recommendation Six: Because the independent reviewers in the McDade shooting were not invited to attend the Department’s administrative review, should PPD engage in future independent reviews, it should reconsider inviting such reviewers to attend those reviews.

A REVIEW OF PPD’S ADMINISTRATIVE MEMORANDUM

The belief that Mr. McDade was armed and the decision to use deadly force.

PPD’s Administrative Memorandum first concluded [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁶ Barnes Report (2009), Recommendation No. 8.

¹⁷ Barnes Report (2009), Recommendation No. 10.

¹⁸ Barnes Report (2009), Recommendation No. 11.

[REDACTED]

The memorandum recounted [REDACTED]

The memorandum further noted [REDACTED]

[REDACTED]

As reflected in the Administrative Memorandum, [REDACTED]

[REDACTED]

The memorandum indicates that [REDACTED]

[REDACTED]

[REDACTED]

Officer Griffin's driving while holding his firearm.

Officer Griffin told investigators that because he had formed the opinion that the subject they were following was, in fact, armed, he removed his firearm from its holster while pursuing Mr. McDade, maneuvering his patrol car with his left hand and holding his pistol in his right hand. According to the Administrative Memorandum, [REDACTED]

[REDACTED]

The decision by Officer Griffin to continue the pursuit of Mr. McDade following a minor collision.

As the officers continued to follow Mr. McDade in their police car, they observed him run though a parking lot and the vehicle access way between two structures. As Officer Griffin drove through the access way, he scraped the front right fender of the patrol vehicle along the wall of one building. The damage to the car was very minor. According to the Administrative Memorandum, [REDACTED]

[REDACTED]

OIR Group considered Officer Griffin's two tactical decisions in tandem because they ended up being potentially interrelated in this incident. During his interview, Officer Griffin repeatedly stated his concern about driving into the access way between two buildings in pursuit of Mr. McDade. Because the passageway was so narrow, Officer Griffin said that he felt that he and his partner might be trapped and unable to exit their vehicle should the suspect turn on them with a firearm. The statements of Officer Griffin raise the question that if there was so much concern about the vulnerable position the officers were placed in by traveling through the alley way, then why did he decide to do so? Principles of officer safety instruct that officers should not try to apprehend at all costs and should curtail any pursuit that places them in undue danger. By his own statement, Officer Griffin indicated that he felt as much,¹⁹ yet Officer Griffin's decision to proceed and what lessons it could teach apparently received little attention during the Department's administrative review.

When police activity results in damage to a patrol vehicle, there should be a reassessment by the involved officers whether to curtail any ongoing action. In addition, such events should be communicated so supervisors can determine whether conditions have arisen indicating the engagement is too dangerous to continue. In this case, there was no radio transmission from the involved officers indicating that their radio car had collided with a wall.²⁰ The involved officers were not asked about their failure to broadcast the collision. This communication issue apparently was not discussed by the Review Board.

Officer Griffin's decision to unholster his weapon and steer with one hand as they proceeded through the narrow passage may have contributed to the cause of the collision. Officer Griffin admitted that following the suspect became challenging due

¹⁹ Officer Griffin described the officers as being "trapped in an alley".

²⁰ It was also observed at the terminus at the event that one of the police car's tires was flattened. As part of the scene investigation, the tire was examined for impact damage from a projectile with negative results. The investigator surmised that the tire might have been driven off the curb at a high point as the officers' left the alley and drove on to Sunset Avenue although there was no obvious damage to the cement. In short, the exact cause of the flattened tire remained undetermined.

to numerous turning maneuvers. Because there was no follow up administrative interview, the Department did not question Officer Griffin further about these tactical decisions. The Administrative Memorandum [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Finally, the Department did not attempt to export this potential learning to its remaining officers through a roll call briefing and/or a training bulletin, foregoing a teaching moment for its officers.

Recommendation Seven: The Department should brief the involved officers and issue a training bulletin on the tactical considerations and potential disadvantages in operating a patrol car while holding a firearm in one hand.

Recommendation Eight: Considering what occurred in the McDade incident, the Department should devise protocols and provide training on those protocols that would require immediate radio notification if officers who are following a suspect collide with a structure, however minor.

²¹ While Officer Newlen said he was carrying his firearm during the subsequent foot pursuit, he was not asked whether he had his gun out at this juncture of the event.

The decision of Officer Newlen to exit the police car, leave his partner, and pursue Mr. McDade on foot.

Officer Griffin and Newlen first observed Mr. McDade while they were in their patrol car. As he ran from them, the officers initially followed in their car. As noted above, at some point, Mr. McDade reversed his direction of travel and Officer Griffin stopped the patrol car in an effort to reposition the police car to continue to pursue McDade. As the car came to a stop, Officer Newlen exited the car and began to chase McDade on foot. Officer Newlen did not take the time to explain his intentions to his partner at the time he exited the police car. According to the Administrative Memorandum, [REDACTED]

The Administrative Memorandum indicated [REDACTED]

According to the Administrative Memorandum, [REDACTED]

[REDACTED] According to the Administrative Memorandum, [REDACTED]

[REDACTED] The Administrative Memorandum indicated [REDACTED]

[REDACTED] The Administrative Memorandum noted [REDACTED]

The Administrative Memorandum indicated [REDACTED]

[REDACTED] The Review Board further
[REDACTED]
[REDACTED]

PPD policy expresses a preference that officers stay together during foot pursuits of suspects. [REDACTED]
[REDACTED]
[REDACTED]

In this case, Officer Newlen took affirmative steps to separate himself from his partner and go into foot pursuit. Officer Newlen compounded this decision by not communicating his intent to his partner. In addition, Officer Newlen left in such a hurry that the passenger door of the police vehicle remained open, requiring Officer Griffin to back up the police vehicle then stop abruptly so that the door would close itself. Since Officer Newlen was no longer in the car, Officer Griffin could not tell his partner that his own plan was to drive the patrol car to cut off the suspect's escape. This communication failure resulted in an improvised apprehension rather than a more choreographed response to the situation.

When we presented these concerns to PPD, it indicated that despite the references to its Administrative Memorandum cited above, the Review Board concluded [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our read of the facts does not support PPD's most recent statement that the officers did not separate from each other. Clearly, when Officer Newlen left the patrol car and focused on Mr. McDade running down the sidewalk, he no longer had a visual of his partner who was behind him. Moreover, when Officer Griffin drove past his

partner and Mr. McDade, he no longer had the ability to see either McDade or Officer Newlen. This is buttressed by the Department's own Administrative Memorandum where it was noted [REDACTED]

With regard to whether the officers had a "pre-developed plan", when initially questioned about their understanding of each other's intentions, Officer Griffin said referring to his partner: "He's gone in a flash. We don't talk about it. He's gone," while Officer Newlen said that when he exited from the car, he "didn't know if [his partner] got out and ran or not" and that he "didn't know exactly what [his partner] was going to do," statements that do not support a carefully orchestrated non-verbalized plan.

PPD's foot pursuit policy further indicates that when a foot pursuit is initiated, officers should broadcast whether they believe the suspect to be armed. When Officer Newlen radioed that he was in foot pursuit, he did not communicate his belief that the suspect was armed. PPD indicated that because information had already been broadcast that the suspects were armed, it was not as important for Officer Newlen to do so. However, the Department's foot pursuit policy does not indicate that the need for officers to satisfy this requirement is obviated when that information has been previously broadcast. Moreover, in this case, the information communicated about Mr. McDade being armed came from what later proved to be an unreliable informant. Neither Officer Griffin nor Newlen had broadcast that they were following a person they believed to be one of the robbery suspects nor their belief that the person was armed. Per the Department's foot pursuit policy, it would have been preferable for Officer Newlen to confirm in a broadcast to fellow officers that he was in pursuit of a suspect he believed to be armed.

PPD's foot pursuit policy instructs that foot pursuits potentially place police officers and the public at significant risk. The policy states that if circumstances reasonably permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In this case, the involved officer was not asked

whether he considered attempting to contain the suspect rather than apprehend him, particularly since the officers had aerial support and they believed that the suspect was armed. The foot pursuit policy indicates that the initiating officer should not attempt to overtake and confront the suspect but should attempt to keep the suspect in sight until sufficient officers are on scene to safely apprehend the suspect. This is especially true when the suspect who is being pursued is believed to be armed. As noted above, the pursuing officer was not directly asked about this provision of the policy, but the Department “deduced” from his statements during his criminal interview that it was his intent to overtake and apprehend Mr. McDade, seemingly contrary to the expectations of Pasadena PD’s foot pursuit policy.²²

[REDACTED]
[REDACTED]
[REDACTED] We had specifically recommended that PPD re-interview Officer Newlen to ask him whether his intent was to apprehend him. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²³

Recommendation Nine: The Department should brief the involved officers in the McDade shooting and devise a training bulletin for all PPD officers advising them of the Department’s foot pursuit policy, the tactical disadvantages of splitting from a partner, the policy’s requirement that officers broadcast whether they believe the suspect is armed, and the tactical concerns in closing distance on a believed to be armed suspect.

²² Another factor to be considered under PPD’s foot pursuit policy is whether the suspect being pursued is known so that he can be more likely apprehended later. In his initial call to dispatch, the victim of the theft said that he “knew” the suspects. It is unclear from the investigation, however, whether that information was made known to responding officers. This is yet another issue that should have been explored by the administrative investigation and review to provide further insight and perhaps training to police dispatchers about the importance of communicating such information to responding officers.

²³ Officer Newlen also reported that he had his gun out of his holster when he was in foot pursuit of Mr. McDade, a tactic that has potential officer safety ramifications. He was not asked about his decision to do so, whether he considered the potential safety issues of running and pursuing while carrying a firearm, [REDACTED] was apparently not discussed by the Review Board. According to PPD, the Department does and has trained its officer to pursue a suspect while on foot with their gun outside the holster.

Officer Griffin's decision to drive past Mr. McDade in an attempt to "cut him off" and "box him in."

Officer Griffin told investigators that after Officer Newlen "bailed" from the patrol car, he heard his partner broadcast over his radio that he was in foot pursuit of the suspect. Officer Griffin said that he hit the accelerator of the patrol car and saw the suspect running along the sidewalk with his partner a sizeable distance behind him. Officer Griffin said that he passed the suspect, angled his car in front of the suspect and then hit the brakes of the patrol car in an attempt to cut the suspect off and box him in.

Officer Griffin told investigators that he had been trained in this technique whereby the passenger officer would go into foot pursuit and the driver would "cut off" the suspect with the car. According to Officer Griffin, Mr. McDade continued a short time further and then abruptly turned into the street where the patrol car had stopped, running directly toward the officer, and began sliding laterally as if he was getting ready to shoot the officer. Officer Griffin said that Mr. McDade's movements "scared" him because he had nowhere to go in response to what the officer perceived as an aggressive move of an armed suspect towards him. According to Officer Griffin, when McDade got within a few feet of him, he believed he needed to use deadly force in order to stop the suspect from firing at him.

It will never be known whether Mr. McDade intended to confront Officer Griffin directly on the driver's side of the patrol car, as the officer perceived, or to run past the rear of the patrol vehicle to the other side of the street and continue his flight. With the advantage of hindsight however, a few factors point toward the latter intention.

First, we now know that Mr. McDade did not possess a firearm or any other weapon so any aggressive options against an armed officer in a vehicle would have been limited. In addition, Mr. McDade's previous evasive move seconds before had been to stop ahead of the officers' vehicle and make an abrupt U-turn running past the patrol car. It is possible that Mr. McDade was employing the same tactic when he

suddenly veered away from the sidewalk on Sunset with the ultimate objective of again running past the rear of the stopped patrol car and continuing his flight in a different direction. Finally, according to an emergency worker at the scene, after being fatally wounded and while being treated for his injuries, Mr. McDade repeatedly asked why officers had shot him, indicating surprise that his actions had caused officers to use deadly force. That being said, the weight of the evidence collected indicates that Officer Griffin believed that Mr. McDade possessed a firearm and had fear for his safety when he decided to use deadly force.

According to the Administrative Memorandum, [REDACTED]

[REDACTED] The

Memorandum noted that "boxing in" was not taught by the Department but by an outside agency during advanced officer training.²⁴ According to the Administrative Memorandum, while "boxing in" was not taught by PPD personnel, the finding of the Review Board was that the technique was an "effective containment application and strategy". According to the Memorandum, PPD Command Staff and the Training Unit intended to further review the application of the tactic on a case-by-case basis when used in the pursuit of suspects.

[REDACTED] Officer Griffin's attempt to "cut off" Mr. McDade and "boxing him in" by driving past him and then angling towards him compromised the safety of the officer, increased his vulnerability, and raised the level of threat to him. In order to successfully complete this tactic, Officer Griffin would have been required to lose visual of and drive past a suspect he believed to be armed who would then have

²⁴ The training referred to in the Administrative Memorandum is the use of "boxing in" following a PIT maneuver. A PIT maneuver is a controversial law enforcement technique deployed by some police agencies to tap a moving car with a patrol car in order to have the suspect vehicle spin out of control and generally requires supervisory approval before it can be deployed. Here, Officer Griffin was not attempting to deploy a PIT maneuver since Mr. McDade was on foot so any tactics deployed in PIT training are inapplicable to the situation confronted by Officer Griffin in this incident.

found himself in a tactically superior position to the officer. Once Officer Griffin stopped his vehicle close to the suspect, he admittedly found himself in a tactically inferior position, and as he described it, stuck in his patrol car with nowhere to go, with few options once McDade suddenly turned on him and advanced in his direction. The attempt to execute the maneuver caused Officer Griffin to place himself in a stopped car positioned too close to a suspect he thought had a gun. As a result, when McDade turned and shortened the distance between the two of them, Officer Griffin felt he had to use deadly force on Mr. McDade.

In reviewing numerous deadly force scenarios, OIR Group has been taught by use of force experts that it is critical to maintain distance and cover²⁵ when dealing with suspects believed to be armed and we have reviewed scores of shootings where officers' decisions to close distance, not seek cover, and advance on suspects believed to be armed have led to those officers placing themselves in compromised positions where they felt constrained to use deadly force. In this case, both Officer Griffin and Officer Newlen attempted in different ways to close distance on a suspect they perceived as armed without being in a position of cover, increasing the threat they believed McDade posed to them.

It is concerning that PPD executives so willingly accepted a tactic that was not taught by their training cadre but one that had been apparently adapted by two line officers as a result of training provided by an outside agency to deal with an inapplicable situation, a fleeing vehicle. The potential peril to officers in dealing with armed suspects demands that they are provided with thoughtful guidance on how best to deal safely with such individuals. To allow officers to improvise and develop maneuvers that are not taught by their agency and run against principles of officer safety incurs too great a risk to the safety and well-being of those officers and

²⁵ Cover is a tactical concept whereby an officer places himself behind objects that will stop any bullets from striking him and prevents suspects from acquiring a target to shoot at. Officer Griffin said he was not in a position of cover when he was seated in the driver's seat of his police car when Mr. McDade abruptly turned in his direction and Officer Newlen said that he had started to move off of the sidewalk and towards the street and was not taking cover when he thought McDade was firing at him and he fired his weapon.

the public. For that reason, we implore PPD to revisit whether it should instruct its officers that, officer safety reasons dictate that they not use the "cut off" and "box in" tactic deployed by Officer Griffin in this shooting.

Recommendation Ten: To avoid the officer and public safety issues that arose in this case as a result of the decision to attempt to cut off Mr. McDade and box him in, PPD should circumscribe its tactical policies and create training that would prohibit a "cut off" and "box in" maneuver when pursuing suspects believed to be armed.

Potential Crossfire Considerations

As Officer Newlen chased Mr. McDade, he told investigators he saw him abruptly turn toward Officer Griffin who was seated in their patrol car. Officer Newlen said he then heard the sound of one gunshot. Officers Newlen reported that he was uncertain who fired the weapon but he believed Mr. McDade was shooting at his partner. Officer Newlen stated that he then observed Mr. McDade pivot, look directly at him and begin to crouch. Officer Newlen said that he then heard a second gunshot and observed a muzzle flash. According to Officer Newlen, he believed that Mr. McDade was shooting at him and fired four rounds at McDade.

Crossfire situations occur when officers are positioned in such a way that their use of deadly force presents a threat to fellow officers or other innocent parties.

According to the Administrative Memorandum, [REDACTED]

[REDACTED]

[REDACTED] The Administrative Memorandum noted [REDACTED]

[REDACTED] The Memorandum noted [REDACTED]

[REDACTED]

[REDACTED]

Despite these conclusions, the Review Board noted that crossfire considerations should remain a training priority and would continually be discussed during Advanced Officer incident review, the range, and situational tactical training to

ensure officers consider their backdrop and the potential that misguided rounds might injure unintended persons.

While the Administrative Memorandum captures the Review Board discussion

[REDACTED]

[REDACTED] When Officer Griffin was interviewed by detectives, he told them that he was not sure where his partner's position was exactly when he decided to fire his weapon. Officer Griffin later in the interview told detectives that he was not going to start shooting back "like crazy" because he knew his partner was "back there somewhere." Officer Griffin also stated that after he got out of the police car, he was concerned that he had shot his partner because he did not know exactly where he had been at the time he used deadly force. When interviewed by detectives, Officer Newlen stated that he could not see what his partner was doing when he heard the first shot.

Regardless of whether the situation created an actual crossfire, the officers' own statements indicated uncertainty regarding each other's position and actions at crucial times during the incident and an articulated concern by Officer Griffin that he might have accidentally shot his partner. The inability to know where each other was and what actions each other was taking occurred in significant part as a result of Officer Newlen's decision to split from his partner and pursue Mr. McDade and Officer Griffin's decision to attempt to drive past Mr. McDade and cut him off. The potential for crossfire that occurred here and the resulting concern and uncertainty expressed by Officer Griffin is another consequence of the prior tactical decisions made by the involved officers.²⁶

²⁶ [REDACTED]

[REDACTED] While our experience has found that officers involved in

To its credit, even though it concluded that there were no actual crossfire issues regarding this incident, PPD used the review to reinforce crossfire concerns as a training priority. During an onsite visit to the Department's range, OIR Group was able to experience some of PPD's training scenarios first hand and found that concerns about crossfire were articulated and discussed during the role playing sessions developed for attendees.

Officer Griffin's failure to place his vehicle in park before exiting his vehicle after the shooting.

The Administrative Memorandum noted [REDACTED]
[REDACTED] The Administrative Memorandum
surmised [REDACTED]
[REDACTED] The Review Board
concluded [REDACTED]
[REDACTED] The Administrative Memorandum noted [REDACTED]
[REDACTED]
[REDACTED] The Administrative
Memorandum further noted [REDACTED]
[REDACTED]
[REDACTED]²⁷

[REDACTED] As related by Officer Griffin in his interview with PPD detectives, as he alights from his car and begins to deal with the downed suspect:

[I]ts my car. It's rolling backwards. I get hit by the door because I had kicked the door open. [...] I didn't close the door behind me. The door hits me in the

deadly force incidents frequently mistake shots fired by fellow police officers as emanating from suspects,
[REDACTED]
[REDACTED]

²⁷ It is unclear from the materials provided to OIR whether the particular issue of the need to ensure that the patrol car is in gear before alighting from the car was taught as part of the driving school curriculum.

back and it's starting to drag me but I'm on top of the suspect and [...] I thought this door is going to hit this guy and it's going to drag this guy. I can't let that happen. So like, I kind of started protecting him. I was trying to kind of push him down.

However, while the potentially disastrous mistake by Officer Griffin and the quick thinking maneuver by Officer Newlen to stop the car from rolling back were discussed during the review process, the Administrative Memorandum did not assign a supervisor to conduct an after incident briefing of this particular circumstance with the involved officers.²⁸

While the Administrative Memorandum spoke to the benefit of providing additional training to its officers with regard to this issue, in correspondence later received from PPD, we were informed that the Department did not believe a briefing or training bulletin was warranted on this point because police officers know full well that vehicles must be placed in park when they come to a stop and exit the vehicle.

[REDACTED]

While it is, of course, obvious that police officers know that vehicles should be placed in park, it is always helpful to remind officers of how high stress situations might deleteriously impact performance of relatively routine actions. While the Department indicated that it has seen no pattern of similar events by PPD employees, we have seen other occasions where a rapid exit of patrol vehicles by peace officers has caused their cars to remain in gear and move forward with the operator outside of the car. Considering the potential for calamitous consequences that could ensue if a police vehicle is inadvertently left in gear without an operator, a briefing on this subject could be a helpful reminder to members of PPD.

Recommendation Eleven: PPD should brief the involved officer and issue a roll call briefing and/or training bulletin regarding the need under stressful

²⁸ An inspection of the patrol car after the incident revealed that the driver's door would not open; the Department concluded that the damage to the door was a result of the door hitting Officer Griffin.

circumstances to remember to place your car in park before exiting the patrol car and the potential calamitous consequences if one forgets to do so.

Review of Issues Surrounding PPD's Mobile Audio Video System.

PPD patrol cars are equipped with a mobile audio video system ("MAV") that provides an ability to capture an audio/video record of events occurring in front of the vehicle. When an officer initiates "Code 3 equipment" (red lights and sirens), the system begins to automatically record events. The system also has a feature whereby officers can turn on the system manually. In the McDade incident, because the officers did not initiate Code 3 equipment and did not activate the system manually, there was no audio or video record of the shooting or any of the events preceding the shooting.

Analysis of State of MAV Equipment.

According to PPD's Administrative Memorandum the Review Board considered MAV issues and concluded that the McDade incident underscored the value of a robust MAV system. However, according to the Administrative Memorandum the Review Board found that the current system was outdated. According to the Memorandum, the current MAV system is failing and the vendor is no longer in business, requiring PPD's technical personnel to repair the storage, camera, and audio systems as best they can. The Administrative Memorandum noted that the Review Board supported a replacement MAV system and has requested future funding allocations from the City.

OIR Group concurs with the Review Board's assessment that the value of a contemporary audio video recording system in its patrol cars cannot be understated. OIR Group recommends that the City consider the Department's assessment that a new system is needed in order to ensure increased functionality and the ability to capture additional events.

Recommendation Twelve: The City should consider whether it should allocate funding for a new mobile audio video system to be installed in PPD patrol cars.

Involved officers' decision not to respond Code 3 (lights and siren).

Officers Griffin and Newlen did not activate the emergency equipment on their police vehicle as they approached the area where the suspects were last seen.

According to the Administrative Memorandum, the Review Board [REDACTED]

[REDACTED]

[REDACTED] The Review Board did indicate that the decision whether to respond Code 3 should be discussed in Advanced Officer Training so that officers understand the possible limitations and benefits of their actions.

OIR Group also reviewed Officer Griffin and Newlens' decision not to respond Code 3 to the felony call. As detailed above, this decision had significant implications because, in Pasadena Police vehicles, activating lights and siren automatically activates the in-car video camera. While PPD policy provides significant discretion to its officers regarding use of lights and siren, it would have been helpful to learn why the involved officers chose not to do so. For that reason, as noted above, we recommended during the administrative phase of the investigation that the Officers Griffin and Newlen be asked about this decision but PPD opted not to do so.

Assessment of involved officers' decision not to manually activate the in-car audio video system.

Whatever limitations exist on the current MAV system, as noted above, officers may activate the system manually. In order to do so, the officer must reach overhead and push the activation button. According to the Administrative Memorandum [REDACTED]

[REDACTED]

[REDACTED]

The Review Board noted if they [REDACTED]

[REDACTED] While the

Review Board [REDACTED]

[REDACTED]

[REDACTED]

The Review Board [REDACTED]

Review Board [REDACTED]

The fact that the video camera in the patrol car of the two pursuing officers was not activated in this case was also an area of our attention. The cameras, which usually show the view out the front of the patrol vehicle, are designed to automatically activate when officers respond with lights and siren, but because the pursuing officers did not turn on their emergency equipment, the camera was not activated. While the system allows for manual activation of the camera alone by flipping a toggle switch, the pursuing officers did not do so.

We agree with the Review Board that it would have been extremely useful to have captured some of the events leading up to this incident with the camera. We also agree with the Review Board's finding that the officers should have been asked during the administrative interview whether they considered manually activating the camera. Current Departmental policy does not require officers to manually activate cameras, leaving that decision to their discretion.

The rationale for activating cameras when rolling with emergency equipment also exists when a patrol car is traveling on a "hot" call, even if the emergency equipment is not activated. For that reason, the Department should consider requiring their officers to activate the in car camera whenever officers are responding to felony calls or pursuing a person believed to be armed.

Recommendation Thirteen: Because in McDade the involved officers chose not to respond with lights and siren and therefore their in-car audio video system was not automatically activated and because they did not manually activate the system, the Department should devise policy requiring manual activation of the

in car audio video system when an officer is responding to felony calls or pursuing a person believed to be armed.

Personal Recording Devices

The Administrative Memorandum indicated [REDACTED]
[REDACTED] The Memorandum noted
[REDACTED]
[REDACTED]
[REDACTED] The Administrative Memorandum noted
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] If they had
activated personal recorders, the audio record created may have proven extremely
helpful to the investigation and analysis of the event.

We have repeatedly seen where mobile audio devices easily activated by an officer can be extremely helpful to sort out events, perceptions and reactions during and after the fact of a critical incident. We urge that PPD do what a number of police agencies have already done and equip its officers with Department owned mobile audio devices. At the same time, we recommend that the Department also devise policy mandating that its officers activate such recorders for certain public contacts and police activities.

Recommendation Fourteen: PPD should equip its officers with mobile audio devices.

Recommendation Fifteen: Because in the McDade shooting, no involved officers activated their mobile audio devices, PPD should devise policy specifying when officers are required to activate mobile audio devices.

Police Radios

According to the Administrative Memorandum, the Review Board indicated that the current radio system used by the Department is adequate. According to the Memorandum it is a system which allows all field units to hear direct radio communication from their fellow field units. However, because of the design of the system, field units can cover (broadcast over one another) at times which complicates car to car, officer to car, and officer to officer communication.

We also reviewed the involved officers' interactions with their radio in this case. Best police practices teach the importance of effective communication among officers. Important observations during the following of a suspect should be radioed to other officers so that they have a better understanding of the situation, including the threat level presented by the individual should the other units be required to deal with him.

In this case, the two involved officers stated that they repeatedly observed Mr. McDade holding the right side of his waistband with his right hand, as if he were holding a concealed firearm. However, at no time during their pursuit of Mr. McDade did they successfully radio these observations to other responding units. During their initial interviews, the officers said that Officer Newlen was attempting to broadcast updated information, but was not able to because he was crowded out by other radio traffic. However, there was little follow up questioning as to whether there was a lack of "air time" during the whole portion of the vehicle pursuit when Officer Newlen was in the vehicle. According to information received from the Department, the radio recordings validated that during some of the time that the officers were following McDade an uninvolved officer broadcast unrelated information on the radio.

Some police agencies teach that if pursuing officers do not have the ability to communicate over the radio, principles of officer safety demand curtailing the pursuit until a broadcast becomes possible. With regard to this case, considering the officers' observations of Mr. McDade appearing to conceal a weapon, if a radio

broadcast was not possible, it may have been advisable to back off their tracking of Mr. McDade until they could do so. When we presented this concern, the Department responded [REDACTED]

[REDACTED] The Department further responded by noting that while Department policy requires curtailment of a vehicle pursuit if the officer does not have the ability to communicate over the radio, this incident did not qualify as a vehicle pursuit.

In our view, the Review Board did not spend sufficient time or analysis studying this issue. Regardless of whether the inability of the officers to communicate valuable observations about the suspect to fellow responding officers was a result of the failure to try hard enough to broadcast the information, the failure of the other officer to practice radio discipline or a combination of the two, the information was not effectively communicated. While generalized ongoing training concerning police radio discipline may be a partial solution to this problem, OIR would have preferred to see the Review Board mandate the development of an action plan to produce training geared to the communication failure in this incident so that the importance of radio discipline and the possible consequences that could ensue were emphasized to its members.

Other equipment issues.

According to the Administrative Memorandum, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Review Board concluded [REDACTED]

[REDACTED]
[REDACTED]

Post-incident response/management.

The Administrative Memorandum noted that the Review Board examined and assessed the supervision at the crime scene. The Board observed that Officers Griffin and Newlen were appropriately separated and asked public safety questions at the scene.²⁹ The Review Board further noted that officers were assigned to remain with the involved officers who, consistent with best police practices, were transported in separate patrol cars to the police station.

The Administrative Memorandum indicated that immediately after Mr. McDade was secured, officers called for paramedics to provide emergency medical assistance. The Review Board found that the on-scene supervisors performed well in preserving the shooting scene and facilitating medical assistance for the suspect.

Our review also found the immediate post-incident response at the scene commendable and consistent with best practices. When backup officers arrived at the shooting scene, an officer uninvolved in the shooting took over the handling of Mr. McDade while another walked the involved officers away from the immediate scene. Officer Newlen had called for emergency medical assistance six seconds after broadcasting that shots had been fired. The paramedics entered the scene less than three minutes later. While waiting for paramedics to arrive, one uninvolved officer shined a light into Mr. McDade's eyes, urged him to "stay with us", "hang in there" and informed him that help was on the way. Consistent with general police safety procedures, Mr. McDade was initially handcuffed, however, once it was determined that he was not armed and was not a threat to responding officers, the handcuffs were removed. The decision for uninvolved officers to take over post-incident responsibilities, including any interactions with Mr. McDade and to remove the handcuffs so that emergency medical personnel could better attend to him demonstrated professional and effective post-scene handling by PPD personnel.

²⁹ Public safety questions are questions intended to assist responding supervisors to address potential issues at the crime scene and include number and direction of rounds fired and whether there are any outstanding suspects. This information is important to know so that investigators can locate any rounds that may have entered residences and apprehend any outstanding suspects.

During our review of the exhibits in the investigative file, we noted that the crime scene photos taken of evidence at the scene show items in different positions. For example, one photo shows one of Mr. McDade's shoes in a different position than another photo. In addition, there are photographs of Mr. McDade's boxer shorts that are in different positions. Some crime scene photographs depict a cell phone while other photos of the same area do not. While there may be explanations for why the items are moved from one photograph to the next, e.g., the scene being inadvertently disturbed by rescue personnel treating Mr. McDade or evidentiary items being collected while the photographs are being taken, the investigative file contains no references or explanations for the differently configured items. It is helpful to any eventual reviewer of the investigative file when such explanations are included as detective's notes to the file.³⁰

Recommendation Sixteen: Crime scene photographs should be carefully reviewed by the investigators. If there is evidence of items having been moved, inquiry should be undertaken into that movement and case notes should explain the circumstances behind the movement.

The Administrative Memorandum [REDACTED]
[REDACTED]
[REDACTED] The Review Board noted [REDACTED]
[REDACTED]
[REDACTED] PPD should be commended for identifying this issue early on in their review process and readily addressing it.

³⁰ To the Department's credit, a shell casing from the shooting apparently became lodged in the shoe of a responding officer who rode with rescue personnel to the hospital and the Department appropriately investigated and documented that occurrence in the file. This is the type of documentation through case notes or supplemental memoranda that we would have liked to have seen in the investigative file documenting the other items that were moved either during rescue attempts or processing the scene. Moreover, in response to OIR Group's Recommendation No. 2 in the Barnes report, and to its credit, PPD created a Crime Scene Response and Management Course curriculum, incorporating issues identified by us in that report and mandated attendance to all supervisors. Finally, while inapplicable to this case, PPD addressed our concern in Barnes about the lack of body screens by purchasing two additional body screens and placing them in supervisors' patrol cars.

Internal review of the criminal investigation

The Administrative Memorandum documented that the Review Board found that the criminal investigation was comprehensive and robust. The Board commented positively on the canvass of the area for witnesses and the work by detectives that eventually proved that the victim had falsely reported that the two suspects had used firearms during the initial crime. The Administrative Memorandum noted that as a result of the extensive work being done by detectives, the involved officers had been awake for almost one and a half days and their legal counsel advised detectives that they were exhausted and in poor condition to provide coherent statements. As a result, the officers were sequestered at a local hotel by the supervising Lieutenant, assigned a monitor, and allowed to obtain a few hours of sleep. According to the Administrative Memorandum, while sequestered, the officers did not have access to reports, other department personnel, or media. The Memorandum reported that the officers were transported back to the police department and interviewed approximately thirty-six hours after the shooting.

The Administrative Memorandum documented the Review Board's recognition that the delay in interviewing involved officers that occurred here can cause public doubt regarding the accuracy of their statement. According to the Memorandum, the Review Board however, recognized that professional groups, such as the International Association of Chiefs of Police and some federal law enforcement agencies recommend at least one sleep period prior to being interviewed by investigators. The Memorandum indicated that although the IACP's recommendation is not currently PPD protocol, in the future the decision about when to interview involved officers will be utilized on a case by case basis.

For a police department to not learn what its personnel have to say about an officer-involved shooting until thirty-six hours after the event is to wait too long to acquire such information.³¹ As with any investigation, during the window of time

³¹ In this case, the only information PPD had from the involved officers directly until their delayed interviews was the brief on-scene Public Safety statement discussed above.

immediately after a critical incident it is crucial to collect evidence from other witnesses and develop additional leads. While ideally some preliminary information and evidence should be gathered before formally interviewing the officers, it does a disservice to both the involved officers and the investigation to spend so much time prioritizing, collecting and digesting that information so that the officers end up waiting for hours to provide their narrative. Moreover, because the most important witnesses to officer-involved shootings are inevitably those who are involved in them, any delay in receiving an account from them limits and delays any follow up leads that could occur from receiving that information.

To their credit, once investigators determined that they did not intend to begin their interview of the officers for several more hours and they were informed of the fatigue factor setting in, PPD did reduce potential contamination by outside sources of the involved officers by continuing to monitor the involved officers while they were escorted to a nearby hotel. However, momentum of the investigation may have been lost as a result of the length of time it took to obtain the involved-officers statements. In this case, the balance between the desire to obtain sufficient information about the incident from other sources before interviewing the involved officers and the interest in obtaining timely first-hand accounts from those officers should have been differently struck.

For the benefit of the investigation and the officers, after at most a few hours into the incident, the officers should be interviewed, regardless of the state of the other evidence. If additional questions arise about the officers' actions after they are interviewed as a result of additional evidence being received, they can always be re-interviewed.³²

³² To the degree that the IACP guidelines opine otherwise, the concern about officer fatigue would be mitigated were protocols developed that would require detectives to obtain statements from involved officers within a few hours of the incident. Moreover, as part of a pattern and practice investigation, the United States Department of Justice has indicated that officer-specific delays in obtaining information from officers involved in shootings has the potential to hinder those investigations and that a waiting period for officers' statements concerning uses of force defeats the purposes of contemporary, accurate data. [See September 12, 2012 letter from Department of Justice to City of Portland Oregon regarding its pattern and practice investigation of the Portland Police Department.]

Recommendation Seventeen: Because in the McDade shooting, the involved officers were not interviewed until thirty-six hours after the incident, Pasadena PD should devise protocols so that interviews of involved officers are conducted no more than a few hours after the incident.

Review of training records.

The Administrative Memorandum indicated that a review of the involved officers training records [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³³

PPD's training regimen in response to the McDade incident.

The Administrative Memorandum indicated that even prior to the administrative review, PPD Command Staff implemented department-wide training for its personnel. Command Staff felt there was a need to proactively review field tactics, firearm discipline, back-drop awareness, scenario based decision-making and other tactics at the police range, including training on the Force Simulator in response to circumstances presented in the McDade shooting. The Administrative Memorandum reported that during 2013, the Department's Firearms Training Team instituted firearms training that focused on "shoot/don't shoot" scenarios from a police vehicle. According to the Memorandum, all sworn officers, including Command Staff, were required to participate and pass the course. PPD officers, communication operators, and others who use the police radio were to receive ongoing training with regard to emergency communications.

We were able to experience some of the training referred to by PPD when we were afforded the opportunity to visit the Department's range. We engaged in some of

³³ This finding is consistent with OIR Group's general observation that PPD provides substantive quality training to its personnel.

the role playing that PPD officers experienced intended to improve their skills in dealing with potential deadly threat situations and decision-making regarding “shoot/don’t shoot” scenarios. We were impressed with the training and insight provided.

OIR Group was also presented with the shoot-from-the-car scenario that was devised in particular response to the McDade shooting. This scenario presented important experience to officers regarding tactical options available when found in a patrol car and faced with a potentially deadly threat scenario. In our view, however, a scenario more finely attuned to the important issues presented in the McDade shooting would have focused on the lead up decisions that resulted in the officer placing his patrol car in a perilous situation so close to a suspect he believed to be armed.

More recently, as a result of not only the McDade shooting but other subsequent incidents involving foot pursuits in the apprehension of suspects, the Department informed us that it has decided it needed to expand its foot pursuit instruction as a current core curriculum. PPD has informed us that an expanded course in foot pursuits and containment tactics is being instituted to ensure that its officers receive instruction based on best practices. We were recently provided with a syllabus of the “Foot Pursuit/Containment Training” and found it to be comprehensive and responsive to the foot pursuit issues presented in the McDade incident. For example, some of the subtopics in the syllabus are entitled, “Communication is the key to success”, “Officer safety first – Potential consequences of partners splitting up”, and “Decision to pursue/capture versus risk to public and law enforcement”. While the development of the class was not in immediate and direct response to the McDade shooting, the potential corrective action that this instruction could provide addresses one of the key tactical decision-making concerns present in the McDade incident.

At the micro level, involved-officers and supervisors should receive direct and targeted feedback through training and briefing with regard to their decision-making and performance. When officers use deadly force resulting in a fatality, they recognize that an investigation is initiated and that their decisions are assessed by the Office of the District Attorney and the Department with which they are employed. When the District Attorney determines that the shooting was within the law, a letter of opinion is prepared and forwarded to the involved officers. At the conclusion of the administrative review process there should also be feedback to the involved officers to provide them insight regarding how the Department's leaders considered and assessed their conduct. However, there is no indication that in this incident, that type of detailed feedback was ever provided to the involved officers.³⁴ It is important both to provide this feedback to involved officers and to document that fact so that, when future incidents or issues arise involving the same officers, the Department can be sure that it fulfilled its duty to them and to the community to use each critical incident as a learning opportunity.

In response to our concerns, the Department indicated that an Administrative Review Memorandum is routed to the involved officers advising them of the findings of the Department. The memorandum outlines whether the officer's actions were in or out of policy and if training was required. We have reviewed the document referred to by the Department and it does not come close to the level of detail that would be necessary for detailed feedback. The feedback we envision is a lengthy briefing with each involved officer where a Review Board participant conveys the specific issues and discussion points regarding the officer's performance, decision-making as well as the operation overall. This briefing should encompass aspects of the officer's tactical decision-making and performance that went well, those that could be improved, and, most importantly, provide additional insight to the officer so that he is better equipped and prepared to address and

³⁴ [REDACTED]

handle future potential critical incidents. For the Department to engage in an extensive review of the incident and then only to communicate back to involved officers, supervisors, investigators, and others involved in the incident, that "we found your performance in or out of policy and/or we are sending you to this training" results in so much lost potential for learning and career betterment for all of those so involved.³⁵

In fact, the Department recently informed us that they did not provide specific feedback to the two involved officers because they did not want to single these officers out or cause them to perceive executive staff was overly critical of their performance. This is misguided reticence. Police officers should be entitled to this level of feedback of their performance so that they can process, respond to, and incorporate the information into their skill set and orientation.

At the macro level, Department-wide training and insight for all patrol officers and supervisors should ensure that the specific issues faced by involved personnel are addressed and discussed in the training so that Department members can benefit from the experiences of those involved. One mechanism for the macro feedback that we recommended in our Barnes' report and that we renew here is that the Department prepare a training bulletin that sets out the salient issues identified during the administrative review process.³⁶

In communications received from the Police Department, we were informed that instead of drafting a Training Bulletin relating to the McDade shooting, the Chief of Police chose to personally visit each patrol briefing and discussed this incident with all Department members. The communique indicated that all members of the Department could ask questions concerning the incident and hear directly from the

³⁵ The development of a timely and robust action plan was featured as a recommendation in our Barnes' report. See Barnes' report, Recommendation No. 12. While the Department asserts that it has followed our recommendation here, for the reasons detailed above, we do not believe the after item actions in McDade completely satisfied that recommendation.

³⁶Barnes Report (2009), Recommendation No. 13.

Chief his perspective on community challenges, the officer-involved shooting and lessons to be learned.

While OIR appreciates the Chief's interest in dialoguing with his Department members about this event, the visits and briefings described do not fulfill all of the goals that a training bulletin can do. First, because a training bulletin is a written document, it can set out the Department's learning objectives clearly, succinctly and thoroughly. More importantly, in contrast to an ephemeral in person visit that is not documented, a bulletin memorializes lessons and serves as a future reference to the Department's teaching. The existence of a training bulletin also assists with future liability and accountability issues in that it demonstrates through the existence of a document that the Department is in intent on improving the skill set of its members while also informing its officers about what the Department's expectations are. Finally, a training bulletin provides valuable information for future members who would not have been employees at the time of the Chief meetings. While the Chief visits could serve as an important complement to the rollout of a training bulletin, for the reasons articulated here they cannot completely suffice as a replacement for the creation and dissemination of such a document.

In addition to the creation of a tailored action plan, a comprehensive review process should include a feedback loop to the Review Board. In our investigation into review processes of other agencies, we have seen review entities order initiatives that never end up being carried out. To avoid this phenomenon, personnel should be tasked with ensuring that any training, policy development, briefings, or other action items are timely implemented and the assignments should be documented in the Administrative Memorandum. The feedback loop should include a date for the Review Board to reconvene so that those assigned projects can report back to the Board what actions were taken and provide feedback on the effectiveness of the

initiative. We recommended precisely this in our 2009 Barnes report and we repeat the recommendation here.³⁷

In response to our renewing this recommendation with the Department, it indicated that after training was identified by Executive Staff prior to the Administrative Review, a training curriculum was prepared, all members of the Department completed the training, and evidence of that training was placed in Department training files. While these events are commendable and notable, encompassed in our recommendation, is an evaluative component where those responsible for the training report back to the Review Board on a date certain regarding its effectiveness and ways in which it could be improved. We also would expect in this feedback loop for those responsible for debriefing the involved officers and other involved personnel regarding the deliberations of the Review Board how the debriefings were received and whether any additional insights about the incident were obtained as a result of them.

Recommendation Eighteen: As was eventually done in the McDade review, a robust and detailed administrative memorandum should be timely prepared that documents the discussion, issues identified, and determinations by the Review Board with regard to tactical decision-making, policy concerns, supervision, equipment, post incident response and assessment of the internal investigations.

Recommendation Nineteen: Pasadena PD's critical incident administrative review process should include a documented, tailored and detailed action plan designed to target and address any issues involving tactics, supervision, training, equipment, or post-incident response or investigative issues.

Recommendation Twenty: The critical incident review action plan should include as a necessary component that individual feedback is provided its involved officers and any other actions of PPD personnel regarding decision-making and issues identified during the internal review.

Recommendation Twenty-One: The critical incident review action plan should include as a necessary component the creation of a training bulletin that provides insight to all PPD personnel issues and challenges identified during the internal review.

³⁷ See Barnes Report, Recommendation Number 12.

Recommendation Twenty-Two: The critical incident review action plan should include the assignment of tasks to PPD and include a report back date when the Review Board should reconvene and receive feedback about the efficacy of the actions ordered.

PPD did not sufficiently consider the potential relationship between risky tactical decision-making and the eventual decision to use deadly force.

While the Administrative Memorandum indicates [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]³⁸ The

officers both recount how, based on the dispatch transmissions and their observations of the fleeing suspect, they believed that they were pursuing an armed suspect, yet they repeatedly made tactical decisions that were not congruent with principles of officer safety. As noted above, those include: (1) not successfully broadcasting their observations of McDade being armed when they were following him in the police vehicle, (2) not communicating with each other regarding their apprehension plan, (3) continuing to pursue the suspect aggressively, including traversing an admittedly unsafe narrow throughway, (4) Officer Griffin deciding to take his gun out thus making difficult driving maneuvers with one hand, (5) failing to reevaluate the safeness of their actions after colliding the patrol car with a building wall, (6) failing to broadcast the traffic collision, (7) splitting partners without effective communication resulting in unclear understandings about their next moves, (8) Officer Newlen deciding to chase an armed suspect on foot with the intent to apprehend rather than the preferred and safer goal of containment, (9) Officer Griffin deciding to engage in a "cut off" and "box in" maneuver which required driving past an armed suspect, and (10) Officer Griffin positioning and stopping the patrol car too close to a running suspect he believed was armed. [REDACTED]

[REDACTED]
[REDACTED]

³⁸ Despite the Department's suggestion, this analysis should not and cannot be reliant on the District Attorney's determination that the deadly force was lawful; in reaching its decision the District Attorney does not consider tactical considerations leading up to the incident and focuses exclusively on the officers' state of mind at the time of the trigger pull.

[REDACTED]

When officers make tactical decisions that place themselves in unsafe positions by closing distance, losing visual of a suspect, failing to communicate, not seeking cover, or not getting help, it increases the likelihood that those officers will end up having to shoot their way out of dangerous situations to which they have, in part, contributed. For that reason, police agencies must consider the possibility that there is a connection between unsafe tactics and a resulting use of deadly force and critically analyze each officer-involved shooting to determine to what extent such officer decision-making may have played a role in the eventual outcome. In this case, the Review Board should have been asking; [REDACTED]

[REDACTED]

[REDACTED]

With regard to issues of the reasonableness of officers' actions from a civil liability standpoint, last year in the case of *Hayes v. County of San Diego*, 57 Cal.4th 622 (2013) the California Supreme Court held that liability for negligence may arise from tactical conduct and decisions employed by law enforcement officers preceding the use of deadly force, when viewed as part of the totality of the circumstances. This most recent pronouncement has caused the two largest law

³⁹ To the degree that in its response to us the Department intimated [REDACTED] it may suggest a Department-wide need to reconsider that calculus.

enforcement agencies in California (LAPD and LASD) to revamp their use of force policies to require Department leaders, when determining whether a deadly force incident is within policy, to consider tactical decision-making preceding the trigger pull. PPD should follow the lead of these two agencies and similarly consider lead up tactical decision making in determining whether a deadly force incident is consistent with Departmental expectations and principles of reasonable conduct set out by California jurisprudence.⁴⁰

Recommendation Twenty-Three: Once concerning officer tactical decision making is identified such as the involved officers:

- (1) not successfully broadcasting their observations of McDade being armed when they were following him in the police vehicle,***
- (2) not communicating with each other regarding their apprehension plan,***
- (3) continuing to pursue the suspect aggressively, including traversing an admittedly unsafe narrow throughway,***
- (4) the driving officer deciding to take his gun out thus making difficult driving maneuvers with one hand,***
- (5) failing to reevaluate the safeness of their actions after colliding the patrol car with a building wall,***
- (6) failing to broadcast the traffic collision,***
- (7) splitting partners without effective communication resulting in unclear understandings about their next moves,***
- (8) the passenger officer deciding to chase an armed suspect on foot with the intent to apprehend rather than the preferred and safer goal of containment,***
- (9) the driving officer deciding to engage in a "cut off" and "box in" maneuver which required driving past an armed suspect, and***
- (10) the driving officer positioning and stopping the patrol car too close to a running suspect he believed was armed,***

PPD should consider whether such decisions may have combined to instill in the officers an extraordinary level of fear so that once the driving officer placed

⁴⁰ While we did not review the subsequent civil proceedings arising out of the McDade shooting, it should be noted that the federal court found that there were sufficient triable issues of fact about the reasonableness of the involved officers' conduct and declined to grant the City's request for summary judgment. After that ruling and on the eve of trial, the City decided to settle the lawsuits.

himself in a precarious position so that once Mr. McDade made an unanticipated move, the officer believed deadly force was his only option.

Recommendation Twenty-Four: In reviewing officer-involved shootings, PPD should recognize the strong correlation between officer tactical decision-making that is inconsistent with principles of officer and public safety and the eventual perceived need to use deadly force and use that principle, consistent with recent California Supreme Court jurisprudence, to assess and evaluate officer decision-making.

PPD should strive to continue to infuse its officers with smart and safe tactics and mindsets so that they can dictate a safe and sound response to “chaotic” and fluid situations.

In declining to explore additional questions about tactics with the involved officers, the Department concluded that the officers faced “chaotic circumstances in a fluid environment”. The implication is that because the circumstances and environment were so difficult and unique, the distillation of individual tactical decision-making would not be particularly productive. We have heard similar comments by other Departments about how a suspect “dictated the outcome”. In our view, it is the chaotic and fluid situations that particularly demand that officers perform at the top of their form, summon their training to retain control of the environment and reduce the opportunity for chaos, and direct an outcome that the officers dictate, not the suspect. However, in order to reinforce this ideal vision of an officer safely taking a person into custody, any tactical decisions that undermine this goal and place officers at risk must be revealed and addressed.

Recommendation Twenty-Five: The Department should continue to work to create a culture where officers are encouraged to use tactical proficiencies and decision-making consistent with principles of officer safety to dictate desired outcomes.

CONCLUSION

Throughout this report we have emphasized issues surrounding officer decision-making in the field. The daunting complexities of modern police work and a natural reluctance to second guess the decisions of officers in circumstances of great stress and time pressure make some police departments reluctant to delve deeply into the thought processes that underlie field performance during critical incidents,

especially when they result in fatalities. We learned late in our review of this incident that the Pasadena Police Department spent considerable time and effort identifying issues during the review process and devising training that began to address some of the issues presented. More promising is the Department's recent attention to providing more exacting training and guidance to its members regarding one of the most dangerous aspects of police work there is; going into foot pursuit of a suspect believed to be armed.

To their credit, after the McDade shooting, the Department and the City once again agreed to open its files to independent outside observers. As we have indicated in our report, there is much to praise the Department for, e.g., the quality of the Detective investigation and the wide ranging issues considered by the Review Board. However, we have set out significant concerns and made recommendations regarding the investigative and review processes, as well as current policies and protocols that we hope the Department carefully considers as bases for needed reform and improvement. Most importantly, by authorizing us to write this public report, the City advances fundamental principles of transparency by providing its citizens, police department members, and other interested stakeholders a vehicle with which to present and consider these issues and join in the discussion about them.

Recommendation Twenty-Six: The Department and the City should cement its commitment to transparency by authorizing release of a factual, analytical, public, and independent report that permits its public and stakeholders the ability to determine for themselves how the incident unfolded, how well the Department investigates and reviews officer-involved shootings, how well the Department holds involved personnel accountable, and how well the Department develops learning for itself and its officers in response to them.