

Report to the City of Pasadena Concerning the Officer-Involved Shooting of Leroy Barnes, Jr.

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OIR Group Report

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I. Introduction and Background

On February 19, 2009, two patrol officers from the Pasadena Police Department stopped a car. That police encounter soon led to an officer-involved shooting in which multiple rounds were fired, resulting in the death of Leroy Barnes, Jr., who had been seated in the back seat of the vehicle. Over the next few days, some community members and the media expressed concern about the appropriateness of the shooting. This concern was heightened by a concession from the Department that some critical initial information relayed about the circumstances surrounding the shooting was inaccurate. Shortly after the shooting, PPD Chief Bernard Melekian began discussions with Michael Gennaco and Robert Miller of OIR Group about conducting an independent review of the shooting. These discussions led to a formal request by the City to review the shooting and to evaluate the Department's investigation and administrative response to the incident. This report is the culmination and encapsulation of that review.

To conduct this review, Gennaco and Miller requested and received complete access to PPD reports, documents, photographic and video evidence, taped interviews, and forensic evidence pertaining to the Barnes shooting. We also reviewed PPD policy and procedures manuals as well as the records of relevant prior shootings. We interviewed Homicide detectives and Professional Standards investigators, training staff, technical staff and supervisors. We also attended the administrative review of the Barnes shooting that was conducted by command staff and chaired by the Chief. Throughout our review process, we received unfettered access and complete cooperation from Police Department members who responded candidly to our questions.

As we publicly stated at the outset of our assignment, the fact that PPD executives reached out affirmatively to request an independent review of this shooting is a testament to PPD's tradition and interest in assessment and improvement of current practices. Our experience with PPD leadership during this review process has confirmed the Department's orientation and openness toward transparency and reform. The positive framework in which the Department received and responded to our inquiry cannot be overstated.

The police response to a single officer-involved shooting provides only a snapshot of the many duties a police department must assume. The Barnes shooting and its aftermath, however engaged many of the Pasadena Police Department's most important functions. This review is intended first to set out with particularity the chain of events that resulted in the use of deadly force in this case. In addition to a detailed reprise of the incident itself, the review focuses on how the Department investigated the shooting. Most importantly, our review examines how the Department responded to facts learned from the shooting, both in terms of providing information to its public about the shooting and using what was learned from the shooting for purposes of accountability and systemic reform. Finally, our report independently reviews the tactical decision making of the involved officers, including the decision to use deadly force. Throughout, our review puts forward recommendations designed to improve the Department's performance in each of these areas when future officer-involved shootings occur. Our remarks are aimed at systems and supervision. Consequently, we believe that all of these issues we identified are amenable to systemic reform and remediation.

II. The Barnes Shooting – The Evidence

Two PPD officers were on routine patrol on the afternoon of the shooting. They observed a group of individuals in the area of Glen Avenue and Pepper Street, with the driver officer ("Officer 1") recognizing some as gang members. They also observed a car that was illegally stopped on the wrong side of Pepper Street. When the patrol car happened upon the group, members of the gathering looked in its direction and began

dispersing. This observation caused the officers to believe that they may have interrupted criminal activity. As the officers approached, they observed one male quickly walk away from the driver's side of the illegally stopped vehicle. The driver officer then saw a man, later determined to be Leroy Barnes, Jr., quickly enter the back seat of the vehicle from the driver's side. The vehicle then proceeded to move forward on the wrong side of Pepper Street. The rear window and rear side windows of the vehicle were darkly tinted.

The officers followed behind the vehicle on Pepper Street and continued to follow as the vehicle turned onto Mentone Avenue. At this point, Officer 1 turned on the patrol car's overhead lights, also causing the patrol car's mobile in-car audio and video system to be activated. The driver of the car being followed responded to the police lights and pulled over.

As Officer 1 and the passenger officer ("Officer 2") stopped and prepared to step out of their patrol car, Officer 1 alerted his partner to the fact that the person in the back seat of the vehicle was ducking down. Officer 1 then opened the left rear door to see more clearly the activity going on in the back seat. Officer 1 indicated that he saw the passenger trying to hide something so he reached all the way into the car and grabbed the passenger's left arm in order to pull and separate him from whatever he was trying to hide. Officer 1 indicated that he thought the passenger was stuffing drugs under the seat.

Officer 1 indicated that he did not say anything to the passenger but once he grabbed the passenger's arm, the passenger said to the driver "Hit the gas. Hit the gas". Officer 1 stated that he then told his partner to watch the passenger's right hand. Officer 1 indicated that he pulled on the passenger fairly hard but the passenger resisted his force. Officer 1 did not recall giving any instructions to the passenger nor did he hear his partner give any commands to the passenger.

At this point, Officer 1 stated that he heard his partner state "gun!" two or three times and then heard a gunshot. When he heard the gunshot, Officer 1 stated that he believed that the passenger had just shot his partner. After he heard the shot, Officer 1

stated that he then pulled the passenger from the backseat. Officer 1 stated that as he pulled the passenger from the car, he recalled seeing him with a gun in his left hand. At the time of the interview, Officer 1 recognized that, in fact, the passenger actually had the gun in his right hand, but still remembered the incident as if the passenger had the gun in his left hand.¹ After Officer 1 pulled the passenger from the backseat, he stated that he hit the passenger's hand with his hand in an effort to force the gun out away from his body and prevent the passenger from pointing the gun at him.

Officer 1 stated that at that point, he retreated to the rear of the car they had stopped and observed the passenger fall to the ground. Officer 1 stated that he had pulled the passenger and then pushed him and that when he swept the gun with his hand, the motion knocked the passenger to the ground. Officer 1 stated that he was at the right rear quarter panel of the car they had stopped when he saw Barnes fall to the ground and remained there during the shooting sequence. Officer 1 stated that during his move to that area he drew his weapon, but had no conscious recollection of doing so.

Officer 1 stated that he recalled Barnes falling and then turning as if he was going to get up or turn and shoot and then decided that he needed to shoot Barnes before Barnes could shoot him. Officer 1 stated that he believed that Barnes had just shot his partner and that after Barnes had regained his composure from being knocked down that Barnes was going to turn and shoot Officer 1. Officer 1 stated that he recalled observing Barnes rolling on the ground like he was going to get up which caused Officer 1 to start shooting. Officer 1 stated that while he fired he saw the rounds going into Barnes and then

¹ This observation, and other statements by the involved officers as noted below do not completely comport with the video and other forensic evidence obtained from the investigation. For example, Officer 1 thought he fired five rounds during the incident when the evidence demonstrated that he fired seven shots. Officer 2 thought he fired six or seven rounds, when in actuality, he fired four shots. The discrepancies between the involved officers' recall and the video and physical evidence does not prove dissembling on the part of the officers; the more likely explanation is that the stress of the situation caused the officers' perceptions of the event to not always match its reality, a not uncommon situation in officer-involves shooting incidents.

observed Barnes turning as if he wanted to get up.² Officer 1 stated that it was not until he fired the last of his seven rounds that he realized that Barnes was still moving possibly because of his reactions to being shot. Officer 1 stated that he stopped shooting because he no longer felt that Barnes was a threat to him.

Officer 1 stated that it was at that point that he observed the handgun lying next to Barnes. Officer 1 stated that he did not recall observing Barnes' hands during the shooting sequence. He stated that it was when he fired the last round or two that he was able to reassess the situation and recognize that Barnes was no longer a threat to him. Officer 1 stated that after he stopped shooting, he noticed his partner to his left, heard him on the radio and realized that his partner was "ok".

Officer 2 stated that as they prepared to stop the car, he observed the rear passenger bending at the waist and moving down towards the right side of the rear passenger area. He stated that the observed movement raised his suspicion and caused him to believe that the passenger was possibly hiding something illegal such as a drug or weapon. Officer 2 stated that his partner stated to him that the passenger was trying to hide something.

Officer 2 stepped out of his vehicle and drew his handgun as he approached the vehicle they had stopped, keeping it pointed towards the ground and next to his hip. Officer 2 stated that he drew his handgun because of the belief that the passenger may have been a gang member and the suspicious actions he had observed him do in the back seat of the vehicle. Officer 2 stated that as he and his partner arrived at the vehicle, the driver screamed at the officers while looking back over her shoulder, stating that she did not know why they had stopped them. By this time, Officer 2 stated that he had reached the outside of the vehicle, and he heard the passenger tell the female driver repeatedly to "just step on the gas". Officer 2 stated that he then observed his partner open the left rear

² As noted below, while the video shows Barnes rolling away from the vehicle after he fell to the ground, there is no evidence from the video indicating that after Barnes falls he is either turning or about to get up off the ground.

passenger door and he yelled to his partner that the passenger was stating “step on the gas”. Officer 2 then opened the right rear door and told the passenger to shut his mouth. Officer 2 stated that after he opened the door, he could see the passenger seated in the middle of the seat with his right arm partially concealed in a backpack. Officer 2 stated that his partner told him to watch the passenger’s hand which he did. Officer 2 stated that he instructed the passenger to show him his hand and then put his hand on the passenger’s arm.

Officer 2 then stated that he observed Barnes’ hand come out of the backpack and saw that he was holding a handgun pointed in his direction. Officer 2 then let go of Barnes’ hand and yelled “gun”. Officer 2 stated that at that point, he initially thought that Barnes had fired at him at which point he raised his gun and shot one round at Barnes. Officer 2 did not recall giving any commands to Barnes at that point nor did he recall his partner giving any commands.

Officer 2 stated that he then immediately retreated and moved away from the vehicle to look for cover. As Officer 2 moved back toward the patrol car, he observed Barnes coming out of the vehicle with his partner close by. Officer 2 stated that he believed that Barnes had come out of the vehicle on his own as opposed to being pulled out by his partner. Officer 2 stated that he backed away from the civilian vehicle maintaining his eyes on Barnes, eventually ending up on the passenger side of his patrol car. Officer 2 stated that he could not see Barnes’ hands or the gun from his position. Officer 2 stated that as Barnes was going down to the ground, he and his partner were firing additional rounds at him. Officer 2 stated that he was standing next to his patrol car on the passenger side when he fired at Barnes. Officer 2 stated that he fired a total of three additional rounds while on the passenger side in rapid succession and thought he could see his rounds striking Barnes. Officer 2 stated that he fired the additional rounds because he felt that Barnes had not given up and that if he did not act, Barnes could still use the gun to fire at him or his partner. Officer 2 stated that he stopped firing when he no longer could see any movement from Barnes. Officer 2 stated that after he first saw the gun inside the vehicle, he did not see the gun again until he knew Barnes was no

longer moving and they approached him, at which point he saw the gun laying in the street.

A review of the video captured by the in-car camera shows the officers activate their emergency equipment and the car they are following pull over to the side of the road. The video shows Officer 1 approach the car on the left side with his gun holstered while Officer 2 approaches on the right side with his gun drawn, pointed down beside his right leg. The video shows Officer 1 pull open the left rear car door and reach inside, followed shortly by Officer 2 opening the right rear car door and also reach inside. The video shows Officer 1 engage in a pulling movement while holding on to the passenger's left arm, at which time a shot is heard and the passenger comes out of the left rear door. The video shows the passenger going to the ground and rolling over one time, coming to rest on his stomach partially out of the camera's frame. The rolling motion is one in which the passenger is moving in a direction away from the vehicle and appears to be caused by the momentum of Barnes coming out of the vehicle.³ When the second shot is fired, Barnes appears to be still rolling. When the third shot is fired, his rolling motion is almost completed. When subsequent rounds are fired, Barnes appears inert. After he comes to rest on his stomach, any movement of Barnes captured on video appears to be in response to the subsequent rounds striking him.

A review of the video indicates that the first shot was fired by Officer 2 when Barnes was still in the car. After a brief pause, the second shot was fired by Officer 2 after Barnes was out of the car on the ground and rolling away from the car. Officer 2 broadcast "shots fired" over his radio. Officer 1 then fired a rapid volley of seven rounds. Towards the end of Officer 1's volley of rounds, a third round was fired by Officer 2. The shooting sequence ended with a final fourth round fired by Officer 2, who then repeated "shots fired" and requested assistance. The elapsed time in which all eleven of the shots were fired was less than seven seconds. Because of the brief pause between

³ Different viewers of the video have come to different conclusions about whether Barnes came out of the car volitionally or whether he was pulled from the car by Officer 1. As noted above, Officer 1 stated that he believed that he had pulled Barnes from the car. Officer 2 stated that he thought that Barnes had stepped out of the car on his own.

rounds one and two, rounds two through eleven occurred within a span of only four seconds. The seven rounds that Officer 1 fired occurred within a span of less than two seconds.⁴ These sequences are evident from the table below, which is derived from our independent review of the incident video tapes.

Shot #	<i>Seconds Elapsed Since Last Shot</i>	Officer
One	—	2
Two	2.4 secs.	2
Three	1.2	1
Four	0.2	1
Five	0.5	1
Six	0.3	1
Seven	0.3	1
Eight	0.2	1
Nine	0.2	2
Ten	0.1	1
Eleven	1.0	2

After the shooting sequence ended, the officers' attention was divided between Barnes, the driver and a crowd that was forming. The driver of the car was ordered out of the car at gunpoint by the officers. Officer 2 requested over his radio for paramedics to respond. Officer 1 then requested backup to assist with the forming crowd. Shortly after assisting officers arrived on scene, a loud sound was heard which was initially believed by on scene officers to be a gunshot. It was later determined that the sound was caused by a rock that shattered the rear window of a police car.

Barnes was treated by paramedics but pronounced dead at the scene. Photographs of Barnes at the scene show him on his stomach with his hands beneath him. The gun that Barnes had been holding was loaded and operable but had not been fired. It was found approximately 4 feet, 5 inches from the side of his body.

⁴ The question of whether Officer 2's third shot was before, during, or after Officer 1's seven round volley was a matter of discussion during PPD's internal review of the incident. After careful review of the video and consultation with the technical experts of PPD, we have confirmed that Officer 2's third shot occurred during the volley of shots fired by Officer 1, likely between Officer 1's sixth and seventh shot.

The autopsy report revealed that Barnes had sustained ten or eleven gunshot wounds with six of the wounds being fatal. The reason the number is either ten or eleven is because one of the gun shots may have caused two distinct entry wounds. Six of the wounds were determined to be fatal. The gunshot paths were described as follows:

- 1: Fatal, entering right lower abdomen, traveling right to left and down;
- 2: Non fatal, entering left buttock, traveling left to right and down;
- 3: Non fatal, entering left mid back, traveling back to front, right, and superior;
- 4: Fatal, entering left posterior flank, traveling up, right, and anterior;
- 5: Fatal, entering left lower mid back, traveling superior, right, and anterior;
- 6: Non fatal, entering right medial forearm, traveling laterally;
- 7: Fatal, entering the left cheek, (Possibly a continuation from GSW#8), traveling sharply up, slightly right and anterior;
- 8: Non fatal, entering the left teres major muscle, traveling superior, right, and anterior, exiting the left trapezius muscle;
- 9: Fatal, entering the left superior latissimus dorsi muscle, traveling superior, right, and anterior, exiting the right neck-shoulder junction;
10. Fatal, entering the left inferior latissimus dorsi muscle, traveling superior, right, and anterior, exiting the right chest;
11. Non fatal, through and through gunshot wound of the left foot.⁵

As noted, seven of the rounds struck Barnes back region to the left of his spine. Five bullets consistent with Officer 1's gun and two bullets consistent with Officer 2's gun were recovered from Barnes' body.

⁵ The numbering of the gunshot wounds by the Coroner is for purposes of reference and is not intended to indicate the sequence in which the gunshot wounds were sustained, which cannot be conclusively determined without speculation. With regard to gunshot wound # 1 listed above, however, witness statements, forensic evidence and a straightforward process of elimination, make it likely that this wound was inflicted by the first round fired by Officer 2.

The night of the incident, the driver of the vehicle was interviewed by PPD personnel. She indicated that earlier that afternoon she was one of a number of people “hanging out” at the intersection of Glen Avenue and Pepper Street. She stated that she decided to go to a liquor store, pulled her vehicle to the wrong side of the street on Pepper Street and asked a group of individuals if someone would go to the store with her. She said that an individual she knew as “LB” (referring to Barnes) said he would go and jumped into the backseat directly behind her. The driver said that the passenger moved a backpack in the car from the rear passenger floorboard onto the back seat. The driver said that shortly after she pulled her car from the curb, she could see that a police car was attempting to pull her over. She indicated that the passenger told her not to stop and when she did stop he told her to “pull off”. She declined to follow the passenger’s instructions and remained on the side of the street.

The driver said that as the police were walking up to her car, the passenger again told her to “pull off”. At some point, she stated that the passenger leaned into the front seat and attempted to put the car in drive but that she prevented him from doing so. The driver stated that both of her back doors were then opened. She said that she could not recall what the officers said to her but recalled that one of the officers said, “He’s got a gun”. The driver stated that she then heard gun shots, at which time she lied down on the front seat of her car. She said that an officer then told her at gun point to get out of the car and she complied.

While the narrative of the driver’s account of the incident as summarized above was relatively straightforward, virtually all of the lengthy two-part lengthy interview of the driver consisted of repeated efforts by the interviewing investigator to get the driver to admit that she saw Barnes with a gun in his hand while he was seated in the back seat of the vehicle. When repeatedly asked that question, the driver responded numerous times that she did not make such an observation and did not see Barnes’ hands, even when she looked back. After extended minutes of cross examination, use of leading

questions, and dogged persistence by the interviewer, the driver finally stated that she saw Barnes' hand on the open backpack and that it held a gun.⁶

III. Crime Scene/Rollout Issues

Pasadena Police Department rolls a number of personnel immediately to the scene of an officer-involved shooting. Responding personnel secure the scene, cordon off the area, obtain a "public safety statement" from the officers, escort involved officers from the scene to the station, identify, mark and photograph pertinent evidence, canvass the area for civilian witnesses, sequester involved officers at the station, monitor them so that they do not discuss the incident among themselves before they are interviewed, and begin the interview process of all witnesses. PPD also immediately notifies the District Attorney's Office so that DA personnel can roll to the scene as well.

These practices conform to widely-accepted best practices for investigation of officer-involved shootings. However, during our review, we learned that no PPD training staff personnel are routinely called to the scene. As we state more fully below, our experience with other law enforcement agencies has taught us that personnel from the departments' training staff can provide a substantial benefit to the review of these critical incidents after the fact gathering has been completed. We have further learned that the benefit of having the perspective of personnel responsible for development of the Department's training curriculum is significantly enhanced if the training experts have the opportunity to observe the scene and the physical evidence in its original setting.

⁶ The numerous and extended prior contradictory statements by the driver and the way in which this eventual admission was obtained virtually negate any evidentiary value of this witness' statement that Barnes held a gun while he was seated inside the vehicle. Fortunately, other sources of evidence exist in this case to reasonably establish that fact. The issues surrounding the way in which the interviewer elicited this statement from the witness are discussed later in this report.

Recommendation #1: We recommend that the Department modify its officer-involved shooting protocols to ensure that training personnel are part of the rollout team.

In the Barnes shooting, we were impressed that Professional Standards investigators identified several issues for executive review pertaining to the way in which the shooting scene was maintained including the following issues that were in need of improvement or areas of concern:

A. Public Safety Statement: Protocols require that the on scene supervisor obtain a “public safety statement” from involved officers. The public safety statement is intended to provide necessary information to responding officers (e.g., existence of any other suspects at large, trajectory of rounds fired) so that the scene can be appropriately managed in terms of public safety. In the Barnes shooting, Professional Standards investigators noted that the obtaining of the public safety statement from the involved officers was significantly delayed.

B. Command Post: Professional Standards investigators further noted that the command post – a staging area for personnel responsible for conducting the officer-involved shooting investigation – was set up too close to the actual shooting scene.

C. Body Screens: Professional Standards investigators further noted that body screens designed to shield the body of the deceased from general view were not immediately available. In order to substitute as a body screen, one of the patrol cars involved in the incident was moved prior to the completion of the scene investigation, harming the scene integrity unnecessarily -- another issue identified by Professional Standards investigators and noted during their executive review presentation of this matter.

During our independent review of the handling of the shooting scene, we learned of additional issues at the roll out stage of the investigation that were not identified for executive review by Professional Standards:

D. Unnecessary Contamination of the Crime Scene: A sheet was placed over the body. This perhaps natural human impulse to cover the dead, especially given the delay in obtaining body screens, nevertheless runs contrary to the Homicide Division's procedures for maintaining the integrity of the crime scene.

E. Inaccurate Observation in One Supplemental Report: We found both the PPD Homicide and Administrative Reports to be factually accurate and supported by the evidence. However, one responding officer prepared a two page supplemental police report that was included in the Homicide Report. That supplemental report described the location of the gun found on the street as closer to Barnes' body than it was: "I observed what I believed to be a small handgun on the ground approximately one foot east of the suspect left hand." Forensic measurements and shooting scene photographs that were included in the PPD file make it clear the firearm was approximately 4 feet 5 inches from Barnes' body when it came to rest and that his hands were under his body. While the supplemental report was not intended to describe with exactitude the location of evidentiary materials, and is corrected by information elsewhere in the Report, the author's description of his observation in this regard, at best, only serves to confuse the reviewer of the investigative report.

F. Check of Vital Signs: There is no evidence that the involved officers or other PPD personnel sought to check the vital signs of Barnes in the minutes immediately following the shooting. Officers may well have had reasonable cause to believe that Barnes had expired after the shooting and still had to deal with a volatile shooting scene, including the driver of the vehicle and a rapidly forming hostile crowd, but best practice after a shooting includes taking vital signs as soon as possible and rendering first aid if practicable.

G. Public Information: Inaccurate information was provided to the media very shortly after the shooting incident; indicating that Barnes had fired his weapon at the officers when in fact he had not. While the inaccurate information provided in this case was quickly corrected when it was learned that a mistake had been made, the initial inaccuracy certainly added to the level of mistrust by some in the community about the shooting incident. Apparently, in a noble effort to provide very early transparency about the details of shooting incident, the initial understanding that Barnes had shot the firearm was communicated to the public before the Homicide walk through and initial scene assessment had been accomplished.

The issue of how much information regarding an officer-involved shooting should be communicated early on is a thorny one. Traditionally, law enforcement has been very reluctant to say anything about the details of an officer-involved shooting other than to say that the matter is “under investigation” and that until the investigation is completed, no further information can be provided. While this conservative approach removes the possibility of inaccurate information being disclosed, the view among some in the community is that this practice is intended to keep the public from knowing facts about an important event that the public is entitled to know and is, in actuality, intended to delay indefinitely any detailed accounting of the incident. Police executives who have attempted to dramatically move away from this approach, as in the current case, have had the attempt backfire on them if the initial information proves to be inaccurate. In our view, as we discuss in further detail below, a middle ground approach to this issue seems the best practice for police departments to adopt in conveying information to the public about these critical incidents.

IV. Investigative Issues

Our review found that Department investigative personnel maintained generally high standards in their investigation and documentation of the Barnes incident. Some outstanding examples of good technique include the transport and monitoring of the involved officers. It is critical to the integrity of an officer-involved shooting, that

involved personnel be transported away from the scene after it has stabilized and a public safety statement has been obtained. More importantly, involved officers must be monitored prior to being interviewed so that they do not share information about the shooting with each other prior to being interviewed and so that their observations are not contaminated by the observations of others. In the Barnes incident, the transport and monitoring as well as the documentation of these important procedures was exceptionally well done.

Another area of the investigation in which Department homicide investigators performed exceptionally well was in the area of witness canvassing. Crucial to any thorough officer-involved shooting investigation is a timely canvass and interviews of potential civilian witnesses to the incident. Moreover, repeated visits to residents in the vicinity of the shooting should be undertaken to ensure that all potential witnesses are identified and interviewed. The witness canvass in this case proved particularly challenging because of the existence of a number of potential hostile witnesses and the dynamic situation faced by the responding officers. Despite these challenges, we found the witness canvassing conducted in this case to be thorough and sustained. Our review of the investigation revealed the following issues of concern:

A. Leading Questions In the course of the interviews of the involved officers, investigators occasionally framed a question in such a manner as to appear to guide the statements of the officer.

Example 1:

Q: Could you see Barnes' hand in the backpack before you opened the door?

[In context, this question was leading because the witness had not yet mentioned observing a backpack.]

This type of leading question is not uncommon in officer-involved shooting investigations and can be entirely unconscious. Effort should be made to avoid leading questions because they may steer an interview toward the preliminary assumptions made by the investigators about the incident. They may also tend to “fill in the blanks” of the normal gaps in perception or memory an officer may have. In addition, the use of leading

questions can create the perception that investigators are assisting their colleagues in formulating the “right” answer:

Example 2:

Q: Have you been told that at that specific intersection that [there are] a lot of our local gang members from Pasadena?

A: Yes, I have.

Example 3:

Q: Based on your experience and your training, do many of those gang members possess handguns and weapons and not only do they possess them have they used them on other human beings including police officers?

A: Yes.

Accordingly, it is important for investigators to ask open-ended questions so that the officer’s pure account of his or her observations is what is recorded, not colored by the investigator’s belief about what the officer probably observed or a simple affirmation of conclusions prompted by the interviewer.

B. “Feeding” Questions Certain questions to the involved officers provided new factual material that the officers had not yet mentioned.

Example:

Q: “On page 15 [of a synopsis created by the Department from various sources] it says [Officer 1] briefly speaks with the driver..., then opens the rear door.”

Other questions provided the officer with specific terms that might prompt the officer to simply adopt the language of another.

Example:

Q: “At that moment when he brought the gun up to your face, did you have tunnel vision?”

C. “Same Page” Questions Our review of the interviews indicated that questions directed at one officer appeared to suggest to him that he and his partner had perceived or stated the same thing. This phenomenon was aggravated by the fact that, at times, the information being provided to the officer was also inaccurate:

Example:

Q: [referring to a synopsis created by the Department from various sources]

“Both officers tell detectives they see Barnes with his right hand concealed in a bag to his right.”

In context, this officer is being asked to characterize his level of fear or apprehension at this moment in the event, however, the framing of the question conveys information to him about the observations of the other officer that is both inaccurate and unknown to him.

Recommendation #2: We recommend that investigators assigned to conduct interviews of personnel in officer-involved shooting investigations be trained in the deleterious consequences of leading questions in these investigations. We further recommend that the investigators’ supervisors be tasked with reviewing interviews of officers involved in shootings to ensure that such a practice does not occur.

D. Witness Transport, Interview and Waiver Important civilian witnesses identified during the on-scene officer-involved shooting investigation are often transported to the station via police vehicle to be interviewed. At the outset, it is critical for investigators to determine accurately whether the witness is a detained suspect or an invited non-suspect witness. In this case, the driver of the car was transported to the station and questioned about her observations of the incident. While she was advised that she was not under arrest, there is no clear documentation of this and no record establishing that she voluntarily agreed to come to the station. Without passing judgment on the propriety of the transport of the witness in this case, our experience suggests that providing both investigators and witnesses themselves with an overt clarification of their status -- in the form of a waiver that the witness could sign -- is advisable.

The lengthy interview of the driver, the interviewer’s refusal to accept the driver’s repeated claims that she did not see a gun in Barnes’ hand, and the interviewing techniques used to eventually extract the admission from her that she did see Barnes with a gun, significantly undermine the evidentiary value of that statement. Moreover, the single-mindedness of the officer-involved shooting investigator in obtaining that

admission suggests confusion about the mission of such an investigation. In such an investigation, the goal of the fact gathering is to determine whether the actions of the involved officer violate the law. To conduct a witness interview that seems intent on producing a concession that will assist in justifying the officer's actions could suggest a one-sided rather than a fact neutral orientation. For that reason, in the same way that involved officers should be asked neutral non-leading questions about the incident, free from undue influence and pressure, any witness should be interviewed in the same fashion.

Recommendation #3: We recommend that the Department formalize its protocols for promoting the cooperation of witnesses while acknowledging their rights under the prevailing circumstances. One option is to use a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed. We further recommend that investigators assigned to officer-involved investigations be debriefed on the investigation's purpose and instructed to refrain from using certain interrogative techniques in interviewing potential witnesses to the incident.

E. Diagrams For Interviews The precise position of officers, civilians, cars and other objects is often of central importance to developing an accurate picture of the rapidly unfolding events of a shooting. It is necessary for investigators to understand what the witness officers and civilians are describing and to ask them to place their observations in a positional context. It is just as important to document this task even if the investigator and the witness may believe they understand each other perfectly so that reviewers of the incident have a permanent record of where the witnesses and other relevant personnel were positioned. Asking the witness to note his or her positioning and movement on a previously prepared diagram or even a crude drawing created by the witness can be invaluable in this regard.

In this case, the Department's forensic team generated excellent scene diagrams but these were never apparently used by investigators during the interview of involved

police personnel, even for interviews that occurred weeks after the incident, when the diagrams would have presumably been available. In this case, neither the availability of the MAV video nor the walk through of the scene by involved personnel obviated the need to use diagrams in interviewing the witnesses because the MAV video does not capture all of the movement and positioning of involved officers and the walk through does not permanently capture the various positioning of the officers.

In the instant case in particular where officers were moving to various positions before, during and after the shooting sequence, the fact that they were not asked to replicate on a diagram their positioning at various points leaves a significant information gap in the accumulation of evidence.

Recommendation #4: We recommend that the Department modify its officer-involved shooting investigative protocols so that interviewers routinely use diagrams to obtain a permanent account of the sequential positioning of involved personnel and civilians.

F. “Force Science” Doctrines Colonel David Grossman and Dr. Bill Lewinski are theorists in the field of combat physiology. Combat physiology is a field of inquiry that attempts to describe and quantify the effects of stress on the perceptions, thoughts and actions of a human being in a combat situation or in anticipation of violent conflict. Grossman has focused mainly on military combat, researching the historical record of how soldiers have actually behaved in the field and drawing conclusions about physiological trends. Lewinski has focused on police officers. He has performed a series of laboratory experiments in an effort to measure the speed of human perceptions and the time delay in responding to deadly threats. His most well-known experiments attempt to measure how quickly an average police officer can draw a gun and shoot when he perceives a deadly threat and how much change can occur in the scene during that delayed reaction time. He has often sought with his findings to explain, for instance, why police officers can shoot a suspect in the back when they reasonably perceived that they were shooting at someone pointing a gun straight at them.

During their interviews of the involved officers in this case, Professional Standards investigators used an amalgamation of Grossman's and Lewinski's doctrines to frame their questions. PPD investigators built an extensive series of questions around a "combat physiology pyramid" that posits a progression of color-coded physiological states of mind ranging from white [Lowest level of readiness] to yellow [Basic alertness] to red ["Optimal survival/combat performance; visual/cognitive reaction time are at their peak"] to gray ["Muscle memory/action without conscious thought"] to black ["You stop thinking"] depending on the level of apprehension experienced by the officer. PPD investigators then asked the officers to use the terms in the pyramid as a reference to describe what they could perceive on a second by second basis during the shooting incident, and to color-code their status. The extensive use of the combat physiology doctrines during the administrative interviews that were intended to obtain facts and observations from the involved PPD personnel presents several concerning issues.

1. Influence – The use of the pyramid during questioning assumes a specific progression of feelings and perceptions and requires the officer to conform to that jargon, rather than simply asking him what was actually observed at a particular time in the action. In other words, using the Lewinski/Grossman framework in pre-planning the interview presumes that the officers did have tunnel vision, were not able to accurately perceive surrounding events accurately, or had delayed reaction times. This presupposition of what the officers were able to observe or how they were reacting virtually demands that the police officer being interviewed acknowledge having tunnel vision, difficulty in perceiving surrounding events or delayed reaction time, even in cases where the police officer may not have personally perceived such observational or reaction deficits. Again, the interview of an officer involved in a shooting should focus exclusively on who, what, when, where questions as well as the officer's state of mind at the time unprompted by any theoretical construct provided by the interviewer.

2. Neglect of More Critical Fact Gathering While the application of the

Grossman/Lewinski doctrine forces the interviewed officers to characterize the incident in terms of tunnel vision and observational and volitional deficits, the more troubling fallout from these interviews was that more fundamental fact gathering ended up being short changed as a result of the fixation on the Grossman/Lewinski doctrine. For example, in this case, while devoting tedious minutes in which the officers being interviewed struggle to color code their mind set up and down the combat pyramid, the interviewers spend insufficient time learning about critical parts of the actual scenario such as the officers' sightlines, positioning and movement as each of the rounds were fired by the officers. The officers' view of whether they were "gray", "black", or "red" on the pyramid is not particularly helpful in learning what happened during the shooting and distracted both the interviewers from thoroughly plumbing the actual positioning, observations, actions, and movement of the officers during the shooting sequence.

Recommendation #5: We recommend that PPD investigators eliminate any reference to the Grossman/Lewinski constructs and focus their interviews on learning the involved officers' observations, positioning, actions, decision making and state of mind using basic open-ended and fact neutral who, what, when, where, how and why questions.

G. The Complications of Mobile Audio Video: This is the first case in which a significant part of the officer-involved shooting incident was captured on the patrol car's mobile audio video system. For that reason, new questions were raised regarding whether the officers should be afforded the opportunity to view the video prior to being interviewed. Because those procedural questions had not been anticipated, resolution of these questions was necessarily handled on an ad hoc basis. Neither group of investigators documented clearly what exposure the officers had had to the videos or asked the officers on the record precisely what they had viewed prior to each interview. Prior to the next officer-involved shooting, the Department should consider developing a consistent protocol for whether and if so, when involved personnel will view the video.

Recommendation #6: The Department should develop consistent protocols on whether, prior to being interviewed, involved personnel will be shown video capturing the incident. One possible protocol for the Department to consider would be to interview the involved personnel during a walkthrough of the event, allow them to view the video, and then follow up by asking if the video caused them to refresh their recollection about the incident.

V. Communication with the Public and the Media

As discussed above, on the date of the incident, PPD disclosed and then quickly corrected misinformation about the shooting to the media; misstating that Barnes had fired a weapon incident to the officer-involved shooting. Several weeks after the incident, PPD renewed its efforts to provide additional information about the incident in response to the continued level of public concern following this shooting, including convening a private meeting with Barnes' family members and community leaders about what the investigation had revealed to date. We viewed this as a commendable attempt at transparency. This effort at transparency is the opposite of the traditional "circle the wagons" response that governs the way the majority of police departments closely guard information about officer-involved shootings.⁷

That being said, as we have stated elsewhere, the initial inaccurate information provided by the Department caused lingering skepticism among some about the Department's account of the incident.⁸ In any case, we are hopeful that the Department will learn and improve from this incident. The lesson should be that before any information is relayed to the public about a critical incident such as an officer-involved shooting, it needs to be double checked for accuracy. That being said, the Department

⁷ Perhaps the most important proof of the Department's interest in transparency is its willingness to publish this independent review of the Barnes' shooting and PPD's response to it.

⁸ We reiterate here that all evidence that we reviewed indicates that the Department's initial inaccurate statement that Barnes fired his weapon was an unfortunate but entirely honest mistake.

should not deviate from its commendable orientation to provide detailed information to its community about these incidents. It simply must ensure, to the extent possible, that the information is completely accurate before it is promulgated.

Recommendation #7: We recommend that the Department continue its commitment to transparency in providing timely information to the public, but redouble its efforts to ensure that such information is completely accurate before doing so.

VI. Shooting Presentation to Command Staff

The investigation of an officer-involved shooting by the Professional Standards unit culminates in a presentation by the lead investigator to the Chief of Police and his executive staff. This presentation provides the framework within which management's internal evaluation of the incident takes place. There is opportunity for questioning the investigators during the presentation and a discussion by the executives after the presentation. The purview of the Professional Standards' inquiry includes crime scene response, investigative issues, tactics, training, supervision and equipment. After the presentation, the executives determine whether any actions of involved personnel violated Departmental policies, including the use of deadly force policy.

It should be noted that most police departments do not have the level of review of officer-involved shootings that is conducted by PPD. Unfortunately, most departments' assessments of officer-involved shootings simply consist of a paper review of the investigative file by the Chief of Police or another high level executive. The fact that PPD devotes the necessary resources to an oral debriefing of its command staff, with discussion and critical review places it at the forefront of progressive policing in this area.

We had the opportunity to observe the presentation in this case and found it to be extensive and detailed. As noted above, several crime scene issues were identified and

presented at the review. Moreover, it was prepared in a commendably short period of time following the shooting.

A. Potential Tactical Issues Not Addressed by the Shooting Review

Presentation The presentation did not raise tactical issues we identified in our review of the shooting incident. First, the review did not reference the tactics chosen by the officers in approaching the vehicle and opening the back doors. The coordination and communication, or lack thereof, between the two officers, was similarly not identified as an issue. The tactical issues surrounding Officer 1's decision to continue to pull on Barnes' left arm after he believed that Barnes had shot his partner was not raised in the presentation. Finally, and most importantly, the presentation failed to raise whether or how the officers articulated their basis for continuing to fire rounds at Barnes after he fell to the ground.

B. Insufficient Use of Diagrams While the diagrams prepared by the forensic staff were presented to the executives, the investigator made no attempt to place the officers' positions within the diagrams at crucial moments during the incident or to state what the evidence pointed to with regard to the officers' progression of movements or lines of sight -- critical evidence necessary to assess the decision making of the involved officers in this incident. Similarly, there was no focus in the presentation with regard to the resting positions of police shell casings, another helpful tool to approximate the positioning of the officers at the time they fired.

Another area where available diagrams were underutilized in the presentation was wound placement. The coroner's diagrams of the wounds, bullet trajectories and bullet sizes were briefly displayed but never offered as an aid in determining what the relative positions of Barnes and the officers might have been at the moment of each shot. In this case, the coroner's diagrams and notes offered more information than usual in this regard because each officer used a different type of gun firing different sized bullets.

C. "Force Science" As with the investigation itself, the Professional

Standards presentation suffered from excessive reliance on the doctrines of force science as interpreted by the investigators. Force science jargon and the color-coded “combat physiology” pyramid framed a large part of the presentation and tended to promote a conclusion oriented rendition of the facts, the reconciliation of officer statements and, most importantly, inattention to other important facts and issues.

D. Insufficient Mastery of the Facts The presentation to the Chief and his staff presupposes that the Professional Standards investigator is the undisputed expert on the facts of the case. This is as it should be, but the investigator was not always able to fulfill that role. The Chief and staff members asked several questions to which the investigator could not respond, most notably, “What is the basis for the perceived threat [after Barnes falls to ground]?”

Recommendation #8: We recommend that internal supervisory protocols be developed to ensure that the administrative presentation to command staff initiate identification of tactical issues, that use of diagrams, trajectory of bullets, location of casings and other forensic evidence be used to assist in explaining the positioning of individuals at various times during the evidence, that the reference to “force science” issues be eliminated, and that the presenter has a mastery not only of the presentation itself but the complete investigative file so that questions raised by command staff can be adequately addressed.

VII. Internal Evaluation Process: Executive Review

During and immediately subsequent to the Professional Standards presentation, the executive staff discusses the incident in the context of Department policies. In addition to issues identified by the Professional Standards presentation, PPD executives brought additional investigative and evidentiary issues to the discussion. While as we state in more detail below, we found this process to be a healthy and wide ranging exchange of perspectives, we identified the following issues regarding the process itself.

A. Prior Shootings A unique aspect of this shooting is that one of the involved officers had participated in three prior shootings in his career. While there was recognition of this fact at the executive review, almost no information was provided regarding the circumstances of those shootings and whether common tactical issues presented themselves. We were particularly surprised that no investigative file existed with regard to the second shooting.⁹ Moreover, during the administrative investigation, little effort was devoted by Departmental investigators to learning anything more about the second shooting. During our review, we were able to learn significant details about the second shooting with the assistance of the District Attorney's Office. Because that Office had successfully prosecuted the civilian involved in the second shooting incident, a substantial file existed regarding the circumstances surrounding the shooting.

As a general rule, prior shootings should be closely assessed to learn whether commonalities involving tactics and decision making exist that provide insight to the tactics and decision making of the shooting under review. The fact that little mention was made of the prior shootings in this review and that little effort was made to learn more about the second shooting by the Department itself indicates insufficient attention to prior shootings as part of the Department's overall review.¹⁰

Recommendation #9: In order for the Department to benefit from past shooting incidents, it should ensure enforcement of its officer-involved shooting investigation retention policy so that such investigations are preserved at least throughout the career of each officer. In addition, the administrative review should routinely closely examine past officer-involved shootings or other relevant history of involved officers to identify any commonalities of tactical decision making and decisions to deploy deadly force.

⁹ During our review, PPD acknowledged that Departmental policy required the retention of the missing report and that it should have been available.

¹⁰ It should be noted that two of the three prior shootings occurred more than ten years prior to the Barnes' shooting and the tactical issues in all three prior shootings were significantly different to those presented in the Barnes case.

B. Lack of Input from Training Staff at Executive Review The same reasons for our recommendation that training staff be routinely called to roll out to the shooting scene support our recommendation that training staff be allowed to participate in the identification of tactical issues for presentation and discussion with executive staff. In order for executive staff to ascertain whether the tactical decision making of an involved officer is consistent with his or her training, an expert on the Department's training curriculum should be available as an immediate resource.

Recommendation #10: We recommend that in officer-involved shooting reviews, training staff be involved in the identification of tactical issues to be presented by Professional Standards investigators and be part of the subsequent discussion and assessment of the tactical decision making by involved personnel.

C. Access to the Investigative File Executive personnel who participate in the shooting review are not afforded an opportunity to review the investigative file prior to the Professional Standards presentation. This places them at a disadvantage when formulating questions to the investigators, identifying issues, or when forming their initial perspectives on the incident. It also places a large burden on Professional Standards personnel to identify and present every issue that might be relevant to the Chief and executive staff. Based on our experience in which executives in other departments have had prior access to the investigative file, if PPD executive staff had similar prior access, we would anticipate that the subsequent discussion at executive review would be more robust and meaningful and less reliant on the presenter to ensure that all of the appropriate issues were identified and discussed.

Recommendation #11: We recommend that each member of the executive review team be provided access to the officer-involved shooting investigative file prior to the executive review.

As we stated above, the consideration of important tactical and policy issues after the presentation is wide-ranging and robust. This is a tribute to the frank atmosphere

fostered by this format and the current administration. In sum, the ensuing dialogue functions as an excellent process for identifying or commenting on issues of individual officer performance, or systemic issues involving training, tactics, supervision, equipment or policies.

D. Lack of Robust Remediation Action Plan That being said, the follow-up to this process is diffuse and delayed. The well developed identification and assessment of issues in need of attention does not translate to the development of a robust action plan directed at remediating identified problems or providing timely and meaningful feedback to involved officers or their supervisors. For example, even with regard to the relatively uncontroversial crime scene issues noted above – lack of body screens, sheet placed over the deceased, movement of patrol car – there was no self-initiated development of a documented remedial action plan designed to address these issues.¹¹ In addition to those issues, the concerns we identify in this paper vary in complexity but many could be remedied through briefing, counseling, retraining or other relatively straightforward approaches. Indeed, some of these issues may have already been addressed through the independent initiative of other Department members but there is no instrument emanating from the executive review process to ensure that each of these issues are, in fact, addressed. A corrective action plan of the sort described here should embrace the whole spectrum of beneficial changes that could spring from a thorough vetting of the incident, including tactical debriefings, focused training, changes or reiterations of policy, equipment modifications, improvements in investigative protocols, and addressing of supervisory issues as well as individual discipline or other accountability.

To the Department's credit, the initial evaluation did result in one corrective action. The executives concluded that Officer 1 had violated current Department policy when he failed to activate his body microphone upon leaving the patrol car. While the MAV system records video and audio information from the car, each PPD officer is

¹¹ To the Department's credit, after we raised the issue of insufficient remediation, PPD undertook a review of that issue and other issues raised by OIR and has already addressed many of them prior to the issuance of this Report.

equipped with a body microphone to record audio information when he or she approaches a stopped vehicle. In this case, Officer 1 did not have his body microphone with him when he stepped out of this vehicle. That decision caused there to be no audio recording of the verbal exchange between the responding officers and the occupants of the vehicle, potentially crucial evidence in this case. In addition to recognizing this violation of policy, the executives also agreed to consider whether current policy should be modified to clarify the requirement that responding officers are to activate the body microphone when the in car audio video system is activated.

While the identification of the MAV audio microphone issue and the development of a corrective action to address that issue individually and systemically are commendable, the Department's review process did not have a system that would ensure that the remaining issues identified in the Department's own review would be addressed. Our inquiry found a "disconnect" between the exacting issue identification caused by the executive review and the lack of any robust corrective action plan to ensure that each of the issues identified were appropriately addressed and remedied. Related to this systemic deficit, there was also no apparent feedback loop to the executives to report back on the progress of any action plan that was developed. Of all of the issues we identified in our review of Departmental investigative practices and handling of officer-involved shootings, we found this shortcoming to be the most significant.¹²

Recommendation #12: The Department should require that a timely and robust action plan be devised in every officer-involved shooting. The plan should address issues that may have presented themselves in each of the following areas: shooting scene/rollout response, investigative issues, individual accountability (potential violations of policy), tactical issues, supervisory issues, training issues, equipment issues, and information to the public. In addition to incorporating different strategies and methods to address each issue ranging from policy

¹² OIR's prior discussion about this systems issue with PPD has caused a thoughtful and engaged response by the Department towards reform and remediation, even prior to the issuance of this Report.

development to discipline, training, and counseling, the action plan should ensure that each impacted unit or individual where issues have been identified is briefed about any concerns raised during the executive review process. The Department should further ensure that an effective and timely feedback loop be devised so that the executive review recommendations incorporated into the action plan are implemented.

E. Intra-Departmental Transparency In addition to the Department's appropriate interest in providing information to its citizenry about the facts of any officer-involved shooting, the Department has an even greater responsibility to provide information about lessons learned from the shooting to its employees. In too many departments, information learned about such critical incidents comes largely from "locker room briefings", with the inaccuracies and rumors attendant to those types of communications.

One way to ensure that beneficial information is provided to PPD employees is to prepare and disseminate a training bulletin in the aftermath of each officer-involved shooting. There are surely issues worth highlighting and lessons to be learned or reinforced in every such incident. The issuance of a training bulletin in every case reduces any stigma associated with selective bulletins and provides accurate information that can constructively increase the knowledge of all officers and dispel the misinformation that sometimes becomes prevalent.

Recommendation #13: We recommend that the Department require that a training bulletin be devised for every officer-involved shooting that addresses issues identified through the review process.

F. Status/Assignment of Involved Officers During the Pendency of the Shooting Investigation Whenever a controversial officer-involved shooting occurs, some members of the community raise questions about the duty status and assignment of the involved officers. In our experience, most law enforcement agencies do not have well

refined guideposts or protocols to guide executives in their decision about what to do with the officer during the pendency of the ensuing investigation. Certainly, many options exist: requiring a fitness for duty evaluation, transfer to another patrol assignment, relief from a duty assignment, removing the officer from patrol assignments or returning the officer immediately to the same patrol assignment. Moreover, the Department's decision has a potentially large impact on the involved officer, the Department, and the community confidence in the police department. It deserves significant care and attention – and is far from an exact science.

Because the decision about what to do with officers involved in shootings is so dependent on the facts and situation presented, there is no “one size fits all” remedy. However, we recommend that after officer-involved shootings, PPD managers confer with experts from both within and outside the Department in order to develop a case specific regimen for the involved officers that consider the interests of the public, the Department, and the involved personnel. In addition to providing Department leaders with facts and insight to better inform their decision, the development of such a protocol will lend comfort to the involved officers and the public to learn that any decision is not ad hoc and arbitrary but a result of carefully considered reflection and process.

Recommendation #14: The Department should develop protocols that provide a mechanism to carefully assess the status and assignment of officers involved in officer-involved shootings during the pendency of the investigation.

VIII. The Barnes Shooting: Tactical Issues

We now consider the tactics employed by the PPD officers during this fatal shooting. This review is not intended to supplant either the District Attorney's assessment of the legality of the shooting as delineated by the penal code. Moreover, this review is not intended to supplant the determination of PPD regarding whether the shooting was within policy but is intended to offer an independent assessment of some of the tactical issues identified by our independent review. Our conclusions are based on our

review of hundreds of officer-involved shootings and discussions with tactical experts both within and outside the Pasadena Police Department.

A. The Officer's Approach to the Vehicle Prior to exiting their police unit, the involved officers broadcast their location and the suspect vehicle license plate number. This is a tactically sound practice. But, then when the officers approached the car together, their procedure was not as clear, consistent, or focused. The back seat passenger's ducking down movement raised their apprehensions, but they chose not to treat the incident as a "felony stop", in which occupants are ordered to exit the vehicle at gun point. Moreover, while they could have, the officers did not order the occupants out of the car or call for backup. One officer approached with his gun drawn; the other officer's gun was holstered -- further indication of an inconsistent approach regarding the appropriate defensive tactics.

The officer safety concern was even more pronounced when the officers opened the back doors of the car. The driver was still at the wheel with the engine running. When the officers approached, almost no attention was directed to the driver of the vehicle, even after she started screaming at them. When the officers reached in and attempted to take hold of Barnes, they placed themselves in a very vulnerable position should the car have begun to move forward rapidly, exposing each of them to the distinct likelihood that they could be dragged or run over by the speeding car. Both officers indeed suspected the vehicle was going to flee, especially after Barnes began to yell at the driver to "Step on the gas." Yet rather than back off and reassess the situation, the officers chose to physically engage Barnes, Officer 1 by tugging on his left arm, while Officer 2 reached grabbed his right arm. The officers' decision to physically engage the passenger rather than disengage and reassess increased their position of disadvantage. The distinct likelihood that the vehicle was going to lurch forward combined with an uncooperative passenger possibly secreting a weapon created very significant officer-safety issues for both involved PPD personnel. As a result of the officers' tactics, if the driver had chosen to speed away as they found themselves halfway in the car, off balance, at a position of disadvantage, and engaged in a physical struggle with a soon to

be armed suspect, the possible consequences to the officers could have been extremely dire.

B. The First Shot Officer 2 fired the first shot when he saw that the passenger had a gun in his hand and that it was moving in his direction. The officer had almost no time to react before shooting and based on the evidence, this shot appears to have been necessary and justified under the circumstances. After he discharged the first round, Officer 2 jumped back onto the sidewalk and moved quickly away toward the patrol car, creating distance and seeking cover, all consistent with police training and principles of officer safety.

As noted above, in footnote 5, we cannot state conclusively which wound was caused by this first shot, however the evidence points strongly to the conclusion that the first shot caused the abdomen wound that the Coroner's report characterized as "fatal...[though] this wound is not immediately incapacitating and time to death would be measured in minutes."

Meanwhile, Officer 1 maintained his grip on Barnes even though he believed that his partner has just been shot by the man. Faced with those facts, Officer 1 did not disengage, seek cover, or unholster his weapon, but continued to tug on Barnes until he came out of the car. At some point, Officer 1 attempted to slap at Barnes' weapon in an effort to prevent Barnes from pointing his weapon and shooting him. These tactical decisions raised potential significant officer safety issues for Officer 1.

C. The Subsequent Shots Officer 1 succeeded in tugging Barnes out of the car, causing Barnes to step on the pavement and begin to tumble to the ground with a gun in his right hand. At this point, Officer 1 disengaged, stepped toward the sidewalk and began to draw his weapon from its holster. These decisions to create distance and seek cover are tactically sound moves and consistent with principles of officer safety.

At this time, Officer 2 fired a second shot from a location near the patrol car. By the time Officer 1 drew his firearm, Barnes had fallen to the ground and begun to roll sideways away from Officer 1. As Barnes was rolling away, Officer 1 fired his first shot,

the third round to be fired at Barnes. Officer 1 continued to fire rapidly, a total of seven rounds. After Officer 1's second round, Barnes appeared to stop rolling and lay on his chest, with his hands under his body, seemingly inert except for the physical impact of the remaining rounds striking his body.

Toward the end of Officer 1's seven shot sequence, Officer 2 fired a third shot at Barnes. After Officer 1's sequence of shots ended, Officer 2 fired a fourth shot at Barnes. By this time, Barnes was not moving and was lying on his stomach with his hands beneath him.

D. The Firearm As Barnes fell to the ground, the firearm he had been carrying separated from his hand and ended up four and one half feet from his final location. Both officers indicated that they did not observe the gun on the street until after the shooting sequence had ended.

E. The Perceived and Articulated Threat for the Subsequent Shots
As detailed above, both officers related that even after they observed Barnes fall to the ground and begin to roll, they remained concerned that he may still be armed, and believing that he continued to pose a deadly threat, they continued to fire at him until they believed he was no longer a threat.

F. The Reasonableness Analysis Whether the shooting of Barnes was within policy depends entirely on whether the use of deadly force was reasonable. In analyzing that question, whether the shooting sequence is seen as one sustained shooting or a multi-part shooting may dictate the conclusion reached. If one views the shooting as one sequence, then the rationale that justified the first round fired by Officer 2, also justified the remaining rounds fired by the officers. In other words, the knowledge that Barnes had pointed a weapon at Officer 2 or the belief by Officer 1 that Barnes had shot his partner and the lack of knowledge that the threat posed by Barnes had dissipated when he dropped the gun provided a reasonable belief that Barnes continued to pose a threat to the officers. Support for this view comes from the fact that the shooting sequence occurred

in a matter of seconds, the officers had little time to reassess and determine whether Barnes continued to pose a deadly threat to them, and they did not know whether he still retained the gun in his position after he went down.

If one views the shooting sequence as a two part or multi-part shooting, the question of whether the subsequent rounds fired by the officers was reasonable becomes more problematic. Certainly, after Barnes came out of the car and the gun left his hand and clattered away from him, he was no longer as imminent a deadly threat to the officers. However, because there is no evidence that the officers had an opportunity to see Barnes' weapon leave his hand, he might still have been perceived as a viable threat to the officers. The question then, is whether the changed circumstances of an individual who had moments earlier threatened an officer with deadly force and was now falling and rolling to the pavement continued to present a sufficient threat to justify the sustained use of deadly force, even if he was believed to have retained a gun in his possession. That same question can also be applied with greater force to the rounds fired near the end of the shooting sequence, when Barnes has stopped rolling and has come to a rest on his stomach with his hands beneath him.

Any conclusion that the subsequent shots fired at Barnes were justified is made more difficult by the fact that the majority of the entry wounds entered his back. That physical evidence matches the video evidence, indicating that Barnes is on his stomach when most of the subsequent rounds are fired, leaving only his back as a viable body mass target. The only possible reasonable explanation for this phenomenon is that the officers still considered Barnes a threat as a result of his earlier use of the firearm in the car and that they believed either that he was moving on the ground to get up and again aggress the officers or that he would soon be doing so. While there is no video evidence that Barnes displayed any movement that he was trying to get up after he fell to the ground, it is what officers reasonably perceive to be happening that is the yardstick with which to measure their decision making. As noted above, the officers' opportunity to discern changed circumstances came within a compressed time frame. Moreover, as any

reviewer of this incident must keep in mind, the involved officers were not afforded the luxury of experiencing this incident “frame by frame” as we did.

While as stated above, the shooting sequence from the first shot to the eleventh shot occurred in a relatively short period of time, the question to be asked is whether between shots one and eleven, the officers had sufficient time from their positions of cover to reassess that initial threat and recognize that as Barnes rolled away from them and ended up on his stomach, he no longer posed an immediate threat. Of course, had they done so, they would have been able to learn definitively that Barnes was, in fact, no longer an immediate deadly threat to them.

PPD found that the dynamic, fluid, and unique situation presented to the officers when Barnes fell to the ground lent support for the officers’ stated belief that Barnes continued to present an imminent threat during the entire shooting sequence. PPD officers are trained to fire a small number of rounds and then reassess the threat presented before continuing to fire. However, many times instinct, adrenalin, and fear affect perception and overcome training when officers are initially faced with a deadly force situation. The question here is whether one would expect officers to be able to reassess the situation prior to the ultimate rounds being fired at Barnes and recognize that he actually no longer presented an immediate threat to them. The Department ultimately concluded that it could not demand that level of precision of its officers and found that the shooting was within policy.

While we understand the logic behind the Department’s decision regarding the reasonableness of the shooting, other experienced reviewers may not have reached the same conclusion as the Department, and would have expected the officers to hold their fire after they retreated to a position of cover in order to reassess the situation. In some ways, however, the finding as to whether the shooting was in or out of policy is secondary to how the Department learns, reacts, and responds to the shooting. Certainly, the fact that the officers were not able to stop shooting in time to learn and observe that Barnes was no longer an actual threat to them after he went to the ground indicates that

they could benefit from improved tactical decision making in order to become more adept at that skill. Moreover, aside from the shooting itself, we are in some ways as troubled by the tactical decision making by the officers preceding the shooting that placed them in a precarious and dangerous position of disadvantage, may have heightened their fear and lessened their tactical options when the gun came out. Likewise, we are concerned about the tactical decision making of Officer 1 when he continued to tug on a person that he thought had just shot his partner rather than disengaging and finding a way to pull his weapon.

We strongly encourage the Department to immediately address these issues. The Department could use lessons learned from this shooting to do more with both the involved officers in particular and PPD patrol officers as a whole aimed at enhancing field orientation toward officer safety and improving the skill of officers in identifying threats and assessing when threats have abated. We hope that, to the degree that the Department considers and accepts our recommendations to develop a more holistic remedial plan of action; such issues will be addressed more assertively in the future.

CONCLUSION

We are hopeful that our review of this shooting contributed to the dialogue regarding the event and provided some helpful recommendations for the Department to consider as it improves the way in which it conducts these important investigations and how it responds to issues that emanate from them.