



John W. Hickenlooper
Mayor

CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

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January 16, 2009

Mr. Richard Rosenthal
Office of the Independent Monitor
Webb Building, 12th Floor / Department 1201
Denver, CO 80202

Dear Mr. Rosenthal:

Thank you for the time, dedication and professionalism of your team and that of the Police Assessment Resource Center (PARC) in preparing the *Denver Report on Use of Deadly Force*. I believe that the Report was a detailed and fair analysis of the Denver Police Department's policies and procedures. I appreciate your acknowledgement of the tremendous work the women and men of the Department have done to insure that our policies and procedures are state of the art and worthy of replication by other agencies.

Over the last eight years the Department has worked diligently to reach this high level of professionalism by being innovative and by following the lead of other professional agencies and organizations from around the country. Listed below are some of our efforts:

- Research – The Denver Police Department (DPD) continually researches information on best practices and emerging trends from:
 - Other Departments – DPD often looks at the work performed at other agencies to see what could be applied to Denver. For example, we examined in detail the report PARC issued after reviewing the officer-involved shootings in Portland, Oregon.
 - Consent Decrees – The Department of Justice has forced several agencies to change their method of operation through the use of consent decrees. These are valuable documents which often contain information on law enforcement best practices.
 - Office of Community Oriented Policing Services (COPS Office) – The COPS Office has published valuable research in addition to encouraging the adoption of new programs through the offering of targeted grant programs.
 - Police Executive Research Forum (PERF) – The DPD has teamed up with PERF on several projects in addition to gathering information from their many publications. We have also been invited to participate in several of their national initiatives one of which was how to effectively deploy conducted energy devices.
 - Universities – The Department has sought the input and participation of local and national universities to address issues such as use of force, racial profiling and retention of employees.

PARC – DPD UOF Report
January 16, 2009
Page 2 of 3

- Consultants – We have hired experts in various areas as well as organizations such as PARC, PERF, IACP and PSComm to assist with our projects.
- Programs – The DPD has taken the information gathered from our research and own ideas to implement a number of new programs including:
 - Use of Force – In an almost constant series of endeavors we have been the most proactive in addressing how we define and use force:
 - ✓ Policy – Since 2003 the Use of Force Policy has undergone two major and several minor revisions. One significant change was the change from a continuum of force to a force options model and the creation of *Levels of Resistance* table.
 - ✓ Review Boards – This revision included the creation of two review boards; the Use of Force Review Board which looks at significant uses of force and the Tactics Review Board which analyzes tactics that officers have used in particular situations.
 - ✓ Less-Lethal – Research was conducted on a number of devices and manufactures after which a limited number of tools were chosen and a very specific policy was drafted.
 - ✓ Crowd Management – In preparation for the 2008 Democratic National Convention in Denver the Department drafted new Crowd Management policies and procedures. These policies and procedures were used to train and guide over thirty-three hundred law enforcement officers from fifty-seven state and local agencies as they worked together to provide professional security to this high risk event.
 - Crisis Intervention Teams (CIT) – Our Department was instrumental in bringing CIT teams and training to the State of Colorado. The Department worked with a multi-agency group to craft procedures and training that are still being used around the State.
 - Operations Manual – Over the years the Denver Police Departments' day-to-day operations have been directed and governed by a set of written policies and procedures. The DPD is currently working to completely re-write these policies and procedures based on model policies from IACP and CALEA along with best practice research in each area.
- Accountability – From the beginning of my administration the issue of individual and agency accountability has been a fundamental effort which has included:
 - Biased Policing (Racial Profiling) – One of our very first projects in 2001 was to proactively address this national issue. We created a citizen-based task force that drafted our policy, developed our training and set up a process for the collection and analysis of data collected from traffic and pedestrian contacts.

PARC – DPD UOF Report
January 16, 2009
Page 3 of 3

- Early Warning – The Department created an electronic system for capturing several disparate indices of an officer's performance. The system was designed to compare similarly situated officers in an effort to create a more fair and effective system. The initial system called the Early Identification and Intervention System (EIIIS) has evolved into our current system called the Personnel Assessment System (PAS). PAS is a more bottom-up system where a Board of officers and a citizen evaluate cases to determine which one of four levels of response by the Department may be the most effective in addressing the employee's needs.
- Disciplinary Advisory Group – After a lengthy process the Department completely rewrote the disciplinary policies that classified all potential rules violations into categories and then applied specific penalties for violations of the rules. While there is some latitude that can be applied to individual cases, that latitude is much more restricted so as to create a more transparent, fair and consistent disciplinary process.

As you can see we are committed to a culture of continuous assessment and improvement. Your organization's work and affirmation is but one more example of this commitment.

Thank you again for all of your hard work and I look forward to your help in implementing many of the changes that you have recommended in the Report.

Sincerely,



Gerald R. Whitman
Chief of Police

CC: Al LaCabe, Manager of Safety

Chapter 1: The Denver Police Department's Use of Force Policies and Training

I. GENERAL USE OF FORCE POLICIES

PARC Recommendation 1

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

The Denver Police Department recognizes the value of all human life and is committed to respecting human rights, the dignity of every individual, and the Constitutional right to be free from excessive force, whether deadly or not. An officer shall use only that degree of force necessary and reasonable under the circumstances. (page 13)

Department Response

Agree: The proposed language has been submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 2

Redefine the definition of force to state in substance:

Deadly and seriously injurious force. The use of deadly and highly injurious force is the most consequential act in which a law enforcement officer will engage. Any use of such force shall be circumscribed by the Constitutions and laws of the United States and the State of Colorado, this use of force policy, and all other relevant Denver Police Department policies, practices, and training. As in all police matters, officers should strive to exercise good judgment and act in an ethical manner. (page 13)

Department Response

Agree: The proposed language has been submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 3

Revise the definition of deadly force to state in substance:

Deadly force is that degree of force, the intended, natural, and expected consequence of which, or the misapplication of which, is likely to produce death or serious bodily injury. Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives would be clearly ineffective, or other exigent circumstances exist. (page 14)

Department Response

Disagree: The proposed language is not consistent with the Colorado Revised Statute. During the most recent major revision of the Department's use of force policy this same concept was considered and was not included.

PARC Recommendation 4

Consolidate and make consistent the circumstances under which an officer may use deadly force. (page 53) Include the following language or its equivalent in (the) use of force policy:

Police officers should ensure their actions do not precipitate an unnecessary or avoidable use of deadly or seriously injurious force, placing themselves or others in jeopardy, by making tactical, strategic, and procedural errors. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered. (page 15)

(Note: The recommendation on page 15 of the report is not consistent with the wording of the summary on page 53 of the report. As a result, the comments are directed towards the recommendation on page 15. GRW)

Department Response

Agree in concept: The requirement that an officer “ensure their actions do not precipitate” a use of force is not consistent with the legal and policy requirement that their actions be “objectively reasonable”. With some rewording this recommendation may be acceptable. The proposed language has been submitted to the City Attorney for a legal analysis and the District Attorney for input.

PARC Recommendation 5

Adopt the Justice Department or Washington, DC Metropolitan Police Department standards which would bring Denver in line with federal law enforcement agencies and other cities which have adopted rules requiring the threat justifying the use of deadly force be "imminent." Alternatively, adopt the formulation used by the LAPD. (page 19)

Department Response

Agree in concept: The overall recommendation is not consistent with the Colorado Revised Statute. This recommendation has been submitted to the City Attorney for a legal analysis and the District Attorney for input. We do agree with the recommendation in the first full paragraph on page 19 of the report that recommends repeating the quoted statement from DPD Operations Manual Section 105.00 in the subsequent section 105.04.

PARC Recommendation 6

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

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

whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (page 20)

Department Response

Agree: The proposed language has been submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 7

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

The more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be objectively reasonable and necessary to counter it. (page 21)

Department Response

Agree: The proposed language has been submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 8

Revise the second scenario concerning active resistance to the following language or its equivalent:

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

When time, circumstances, and safety permit, there may be alternatives to using force even if the force is proportional to the level of resistance. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly. (page 22)

Department Response

Agree in concept: However, the two paragraphs are confusing. We will work with the Office of the Independent Monitor to reword this recommendation. The proposed language will be submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 9**Eliminate the third, fourth, and fifth scenarios. (page 24)****Department Response**

Agree.

PARC Recommendation 10**Consolidate statements about community expectations and reasonable force by stating in substance:**

The community expects and the Denver Police Department Requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same.

The level of force applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is necessary and within the range of “objectively reasonable” options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. (pages 24-25)

Department Response

Agree: The proposed language has been submitted to the City Attorney for a legal analysis prior to inclusion in Department policy.

PARC Recommendation 10a**We recommend adoption of the following language and deletion to the reference to the *Boykin* case:**

When reasonable and safe under the totality of circumstances, officers must use advisements, warnings, verbal persuasion, and other tactics. Additionally, under the totality of the circumstances, an officer should deescalate force, including, when reasonable

and safe, disengaging to a position that is tactically more secure or allows an officer greater distance, if to do so will reduce the immediacy of the threat and allow more time for the officer to call for backup or to consider or deploy a greater variety of force options. (page 25)

(Note: This recommendation is not reflected in the *Summary of Recommendations* at the end of Chapter One. This recommendation is detailed on page 25 of the report under section VI. *Disengagement*. GRW)

Department ResponseDisagree: The quote from the Department’s Operations Manual section 105.00(1) is complete and valid. The isolation of *Boykin v. People* in section 105.00(3) is in context with the flow of the policy and is clearly and appropriately titled Case Law.

PARC Recommendation 11

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

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. The drawing or displaying of a weapon is use of force and should be reported and tracked as such. (page 27)

Department Response

Agree in part: We do agree that a statement similar to the LAPD policy is acceptable. However, we do not agree with the recommended wording in the report nor do we recognize a benefit, and none is stated in the report, to writing a report every time an officer removes his firearm from the holster. We will work with the Office of the Independent Monitor to draft an acceptable wording.

II. TASERS**PARC Recommendation 12**

Revise §105.02(4)e.5.b.2 to provide:

The Taser may be used in situations where it is reasonably necessary to prevent an officer or a third person from an imminent threat of death or serious bodily injury. (page 28)

Department Response

Agree.

PARC Recommendation 13

Amend Taser training materials to require that "active aggression" is minimally required to justify use of the Taser. (page 28)

Department Response

Agree.

PARC Recommendation 14

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

The Taser will not be used:

- 1. when the officer knows a subject has come in contact with flammable liquids or is in a flammable atmosphere;**
- 2. when the subject is in a position where a fall may cause substantial injury or death;**

3. **punitively for purposes of coercion, or in an unjustified manner;**
4. **when a prisoner is handcuffed;**
5. **to escort or jab individuals;**
6. **to awaken unconscious or intoxicated individuals; or**
7. **when the subject is visibly pregnant, unless deadly force is the only other option.**

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

1. **when the subject is operating a motor vehicle;**
2. **when the subject is holding a firearm;**
3. **when the subject is at the extremes of age or physically disabled; or**
4. **in a situation where deadly force is clearly justifiable unless another officer is present and capable of providing deadly force to protect the officers and/or civilians as necessary. (page 55)**

Department Response

Agree in part: It appears that the report is, among other things, recommending that policies that restrict the use of the ERD/Taser be consolidated into one easily read section of the police, with which we agree. Many of the recommendations already exist in current DPD policy. Therefore we will address each item separately.

Under the section titled, "The Taser *will not* be used" our response is as follows:

1. Current DPD policy is more restrictive; however, we will modify the current language to include exposure by a subject.
2. Agree. Current DPD draft policy only addressed falls from a significant height.
3. Current DPD policy is more restrictive and will be relocated in a list format.
4. Current DPD policy is more comprehensive acknowledging that a handcuffed prisoner can still exhibit active aggression or aggravated active aggression. We will review the wording and it will be relocated in a list format.
5. Disagree: This is already prohibited by the requirement of active aggression for deployment.
6. Disagree: This is already prohibited by the requirement of active aggression for deployment.
7. Agree: DPD policy already prohibits deployment against a subject who is pregnant but does not state "unless deadly force is the only other option."

Under the section titled, "The Taser *should not* be used" our response is as follows:

1. Agree: Given the qualifying statement of "compelling reasons." We have already drafted a more detailed wording.
2. Agree: Given the qualifying statement of "compelling reasons."
3. Agree: Given the qualifying statement of "compelling reasons."
4. Agree: Given the qualifying statement of "compelling reasons" and rewording of the recommendation.

PARC Recommendation 15

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

Use of the “Drive Stun” is discouraged except in situations where the “probe” deployment is not possible and the immediate application of the “Drive Stun” will bring a subject displaying active, aggressive or aggravated aggressive resistance safely under control. Multiple “Drive Stuns” are discouraged and must be justified and articulated on the Use of Force form. If initial application is ineffective, officer will reassess situation and consider other available options. Mild resistance — such as bracing oneself or squirming —shall not constitute "active resistance" for purposes of applying the Taser in drive stun mode. (page 31)

Department Response

Agree: We will need to rewrite the recommended language from the report.

PARC Recommendation 16

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

The subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to comply unless doing so would subject any person to the risk of serious bodily injury or death. In the training materials, it is recommended that the Taser officer shout "Taser, Taser, Taser!" for the benefit of the suspect and other officers. This latter point should be incorporated in policy. (page 32)

Department Response

Agree in part: The wording in the recommendation on page 32 is different than the wording in the Summary Recommendations. We agree with the general wording in the recommendation on page 32. The recommendation will be rewritten to be more consistent with the displaying of active aggression which is the minimum threshold for Taser use.

PARC Recommendation 17

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

When activating a Taser, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody. Training should include recognizing the limitations of CED activation and bring prepared to transition to other force options as needed. (page 33)

Department Response

Agree: We already have draft language written.

PARC Recommendation 18

Revise its Taser policy to provide that:

The display of the Taser be prohibited unless the officer has an objectively reasonable belief that the discharge of the Taser is imminent. (pages 33-34)

Department Response

Disagree: Prohibiting display until use is justified is not reasonable under most circumstances. We will work with the Office of the Independent Monitor and attempt to draft an acceptable wording.

III. FOOT PURSUITS**PARC Recommendation 19**

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

Guidelines and Restrictions

1. **The pursuing officer shall terminate a pursuit if so instructed by a supervisor.**
2. **Unless there are exigent circumstances such as an immediate threat to the safety of other officers or civilians, officers shall not engage in or continue a foot pursuit under the following conditions:**
 - a. **If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension.**
 - b. **If the officer becomes aware of any unanticipated circumstances that substantially increases the risk to public safety inherent in the pursuit.**
 - c. **While acting alone. If exigent circumstances warrant, the lone officer shall keep the suspect in sight from a safe distance and coordinating containment.**
 - d. **Into buildings, structures, confined spaces, or into wooded or otherwise isolated areas without sufficient backup and containment of the area. The primary officer shall stand by, radio his or her location, and await the arrival of officers to establish a containment perimeter. At this point, incident shall be considered a barricaded or otherwise noncompliant suspect, and officers shall consider using specialized units such as SWAT, crisis response team, aerial support, or police canines.**
 - e. **If the officer loses possession of his firearm.**
 - f. **If the suspect's identity is established or other information exists that allows for the suspect's probable apprehension at**

- a later time and there is no immediate threat to the public or police officers.**
- g. If the suspect's location is no longer known.**
 - h. If primary officers lose communications with EOC or communication with backup officers is interrupted.**
 - i. If an officer or third party is injured during the pursuit who requires immediate assistance and there are no other police or medical personnel able to render assistance.**
 - j. If the officer loses visual contact with the suspect.**
 - k. If the officer is unsure of his or her own location or direction of travel.(pages 35-36)**

Department Response

Agree in part: The majority of information in the DPD Training Bulletin was taken from other large police agency policies, consent decrees and the IACP model policy. We will address each item under "Guidelines and Restrictions" individually:

- 1. Agree: Already in DPD training
- 2. Agree.
 - a. Agree: Already in DPD training.
 - b. Disagree: Already covered by section "a" above.
 - c. Disagree: There is no justification in the report to support this restriction.
 - d. Agree: The initial wording is already in DPD training and will be retained in its current form. The second sentence will be added and the third sentence will not be added.
 - e. Agree: Already in DPD training.
 - f. Disagree: There is no justification in the report to support this restriction.
 - g. Disagree: You cannot be in pursuit if suspects' location is not known.
 - h. Agree: Already in DPD training.
 - i. Agree in concept: We will need to rewrite the statement to allow appropriate discretion by involved officers.
 - j. Disagree: During the course of a foot pursuit you may lose visual contact for short periods of time. Also, the recommendation does not differentiate between pursuing and search for a suspect.
 - k. Agree: Already in DPD training.

Finally, the comment in the report (not listed in the Summary Recommendations) recommends that the training become policy. The circumstances preventing this from occurring are a local Workers Compensation issue that has been discussed with the Independent Monitor. We will review this issue with the Independent Monitor again based on this recommendation.

PARC Recommendation 20**The DPD should produce its own video on foot pursuits. (page 37)**Department Response

Agree.

IV. CANINE POLICY**PARC Recommendation 21****Consider amending canine policy regarding announcements to require:**

1. **The announcement should be made by amplification or public address system whenever possible.**
2. **If significant time passes between the warning and deployment of the dog, the warning should be repeated.**
3. **Sufficient time should be afforded before release of the dog to permit third parties and bystanders to leave the area. (page 38)**

Department Response

Agree: Items #2 and #3 are currently in DPD Policy.

PARC Recommendation 22**Revise policy to require advance approval to dispense with an announcement:**

A recommendation to not make a canine deployment announcement must be approved by the ranking Department supervisor in command at the scene of the incident. A decision not to make a deployment announcement should be made by a lieutenant or higher. When conducting area searches for suspects believed to be armed, concerns for the safety of search personnel may dictate that an announcement not be made. In these instances, the canine handler will advise the on-scene supervisor of the reasons for precluding an announcement and abide by subsequent direction. Individual handlers shall articulate the justification for not making canine announcements. (page 38)

Department Response

Agree in concept: The current DPD Policy adequately states that supervisory approval is required to deploying the Canine. We will add language to the existing policy that requires the same approval for not giving a deployment announcement unless exigent circumstances assist.

PARC Recommendation 23**Revise canine policy to provide:**

Searches for felony suspects, or armed misdemeanor suspects, who are wanted for serious crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine. Searches for suspects wanted for Grand Theft Auto shall be limited to those who

are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle. Known passengers, absent extenuating circumstances, should not be searched for with the use of a police service dog. Canines should not be used to apprehend anyone suspected to be under the influence of drugs or alcohol if no other crime is involved, nor the mentally disturbed if no other crime is involved. (pages 39-40)

Department Response

Agree in concept: The wording recommended in the report is somewhat confusing but we agree with the concept of listing more specific boundaries for the deployment of the Canine beyond the Use of Force Policy. We will work with the Metro/Swat Canine officers and their command and the Independent Monitor to draft reasonable guidelines to be added to the Canine Unit Manual and the Department's Operations Manual.

PARC Recommendation 24

Limit off lead searches to:

commercial buildings or instances in which the suspect is wanted for an offense of violence or reasonably is suspected to have a weapon. (pages 40-41)

Department Response

Disagree: The Department requires Canines be under Handler Control both on and off leash. We will revisit this as a training and deployment method in conjunction with #23 above.

PARC Recommendation 25

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

In keeping with the [Department's] use of force policy, wherein we are mandated to use only the level and amount of force necessary to overcome resistance, the following direction relating to the use of [Department] canines will be adhered to by all handlers. In situations where a ... canine finds or bites a suspect, the concerned handler will as rapidly as possible assess the need for their canine to contain or seize the suspect. At the first possible moment that it is determined that the suspect is not carrying a weapon, the canine will be called off. This will be accomplished without delay. Handlers will factor into their call-off decision the fact that the average person will struggle if being seized by a canine. This struggling, alone, will not be cause for not calling off the canine. (page 41)

Department Response

Agree: The recommendation needs minor wording changes.

PARC Recommendation 26

Regularly test DPD handlers in real-life scenarios on their ability to control the dogs on leash and off leash; to obtain immediate compliance when the dog is ordered to release a bite or to proceed to bite; and test whether the dog can bark and hold without biting. (page 42)

Department Response

Agree in part: The Canine Unit does regular training and testing consistent with this recommendation and we will ensure that the details of the recommendation are consistent with NPCA Patrol Certification standards followed by the Department.

V. SHOOTING AT MOTOR VEHICLES**PARC Recommendation 27**

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

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

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

An officer threatened by an oncoming vehicle shall move out of its path, if at all possible, instead of discharging a firearm at it or any of its occupants. (page 45)

Department Response

Agree in concept: We will work with the City Attorney, the District Attorney and the Independent Monitor to draft acceptable wording. However, we do not agree that the current policy is overly permissive.

VI. FLASHLIGHTS**PARC Recommendation 28**

Amend use of force policy to provide:

head strikes with a flashlight be prohibited, absent exceptional circumstances, and only when deadly force would otherwise be permitted. (page 47)

Department Response

Agree: Similar language is currently in training material and the DPD Operations Manual.

PARC Recommendation 29

Switch to lighter and smaller flashlights that provide the same or better illumination and coverage as the heavier ones but which cannot be used as impact weapons. (page 47)

Department Response

Agree: Currently DPD does not provide flashlights to officers and doing so will be very costly. However, making modern flashlights available at no cost to officers would discourage the carrying of larger flashlights. We will research the available equipment and the cost involved.

VII. PISTOLS

PARC Recommendation 30

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

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

- (1) the inherent danger of an accidental discharge endangering the officers and other bystanders and**
- (2) the firearm is also generally an ineffective impact weapon due to its construction and weight. (page 48)**

Department Response

Agree: Similar language is currently in training material.

VIII. SAPS, BLACKJACKS, AND ANALOGOUS WEAPONS

PARC Recommendation 31

Address whether there is any convincing rationale for the use of these particularly injurious impact weapons and, if not, ban them. (page 49)

Department Response

Agree: We will examine the use of all impact weapons and determine if there is a convincing rationale to continue their use.

IX. OFFICER SURVIVAL TRAINING

PARC Recommendation 32

Eliminate from Officer Survival Training any implication that an officer engaged in community policing is putting himself or herself at a greater risk of death. Teach community oriented policing values. (page 51)

Department Response

Taken in context the example used is much less dramatic. However, we agree with the overall concept stated in the report. We have already begun a review and updating of the entire Training Academy curriculum (about 250 individual training segments). We are incorporating Community Policing principles in our training while updating supporting research.

Chapter 2: Investigation Procedures

I. INVESTIGATION PROCEDURES

PARC Recommendation 1

The DPD should update its Operations Manual to fully reflect the fact that Internal Affairs is charged with investigating officer-involved shootings from the administrative and tactical perspectives. (page 65)

Department Response

Agree.

PARC Recommendation 2

Internal Affairs and the Monitor should be provided with copies of all written reports and statements as soon as possible after they are completed and, to the extent feasible, before the videotaped interviews begin. (page 66)

Department Response

Agree.

PARC Recommendation 3

Internal Affairs should commence its investigation of policy and tactics issues immediately after the shooting, without waiting for the completed Homicide investigation. (page 67)

Department Response

Disagree: There is a clear need to separate the criminal and administrative investigations of a critical incident. We do agree that tactical inquiry is appropriate during the criminal investigation as it relates to the reasonableness of the officers actions.

II. CRIME SCENE PRESERVATION AND EVIDENCE COLLECTION

PARC Recommendation 4

The DPD should consistently use its skill and expertise in locating, collecting, documenting, and testing physical evidence. (page 73)

Department Response

Agree: The Department had made many costly improvements in this area over the past six years as were discussed with the authors of the reports and the Independent Monitor.

III. INTERVIEWS OF WITNESSES

PARC Recommendation 5

The DPD should videotape or audiotape all interviews with supervisors, police officers, and civilian witnesses who have significant knowledge about an officer-involved shooting incident. (page 75)

Department Response

Agree in concept: The Department has been a leader in the taping of witnesses and participants in critical incidents. Taping has been standard practice since the 1970's. We will continue to video and audio tape interviews when necessary and appropriate in consultation with the District Attorney present at during the investigation.

PARC Recommendation 6

To the extent feasible, one investigator should conduct all the interviews on one case. (page 77)

Department Response

Disagree: Unfortunately this recommendation is rarely feasible. Realizing the need to coordinate information between interviews Investigations Division lead detectives, supervisors and commanders review written statements and monitor recorded interviews.

PARC Recommendation 7

Investigators should be required before they interview a witness to know what other witnesses have said on the same subject, and that they be required during interviews, unless there is a good reason not to, to address the inconsistencies. Investigators should also re-interview witnesses to try to resolve what the truth is. Investigative reports should document material inconsistencies. (page 78)

Department Response

Disagree: Generally investigators do know what other witnesses are saying throughout the course of the investigation, however, requiring this in every case is not practical. Frequently witnesses are asked to clarify their statements and additional questions are asked based on other witness statements and investigative findings.

PARC Recommendation 8

The DPD should adopt a formal protocol to have all interviews of sworn personnel be conducted by an officer of equivalent or higher rank. (page 75)

Department Response

Agree in concept: Generally this is done; however, it is not possible in all cases. There are always officers of a higher rank monitoring the questions.

PARC Recommendation 9

To the extent feasible, one investigator should conduct all the interviews in any given case. (page 77)

Department Response

Disagree: See #6 above.

PARC Recommendation 9a

Detectives undoubtedly are familiar with the need to describe witness demonstrated activity when audio taping. They should also describe demonstrated actions when conducting videotaped interviews. (page 76)

(Note: This recommendation is not reflected in the *Summary of Recommendations* at the end of Chapter Two. This recommendation is detailed on page 76 of the report under section *III. Interviews of Witnesses*, and the response is directed at that recommendation. GRW)

Department Response

Agree in concept: We will remind detectives to do this when appropriate.

PARC Recommendation 10

DPD investigators should identify, and conduct thorough, unbiased, and tape-recorded interviews of all witnesses—including supervisors and emergency medical personnel—in officer-involved shooting cases. Supervisors should carefully monitor the appropriateness and fairness of questions asked of such witnesses. (page 79)

Department Response

Agree: Currently, all important witnesses are subjected to a recorded interview. The questioning is monitored by a supervisor and/or a command officer. We agree that questioning must be thorough, unbiased, appropriate and fair.

IV. PRESENTATION OF EVIDENCE**PARC Recommendation 11**

All recorded interviews and all radio communications and 911 calls in officer-involved shooting cases should be transcribed. (page 82)

Department Response

Disagree: Transcribing all interviews and radio communications is not necessary or cost effective. We have reached an agreement with Internal Affairs that more transcription will be done in an effort to support their review.

PARC Recommendation 12

Officer-involved shooting investigations should regularly include information on prior shootings by that officer, prior disciplinary history, training records, and documentation of the officer's last qualification. (page 83)

Department Response

Agree in concept: We do not include personnel documents in the criminal case file. We do include necessary documents in Internal Affairs cases and access is allowed for the administrative review process.

PARC Recommendation 13

The DPD must ensure that the summary reports in officer-involved shooting cases are complete and balanced in analyzing all the available evidence and in documenting the investigatory steps taken in the case. The DPD should require that the supplementary report identify all inconsistencies identified during the course of the investigation. (page 84)

Department Response

Agree: We agree that the reports must be complete and detailed. However, we are cautious about adopting a mandate that the individual detective must form an opinion in analyzing and indentifying inconsistencies.

PARC Recommendation 14

Officer-involved shooting investigations by IAD and reviews by the UFRB as a rule include information on prior shootings by that officer, prior disciplinary history, training records, and documentation of the officer's last qualification. A checklist should be developed for this purpose. (page 83)

Department Response

Agree.

Chapter Three: Internal Review

I. INTERNAL REVIEW

PARC Recommendation 1

Strengthen selection process for civilians to require attendance at and satisfactory completion of a Citizen's Academy and participation in at least one ride-along every six months while assigned to the UFRB pool. (page 96)

Department Response

Agree.

PARC Recommendation 2

The same three individuals empowered to select citizens for the DRB pool should also pick which citizens from the larger pool will serve on the UFRB. (page 97)

Department Response

Agree.

PARC Recommendation 3

Require that the number of UFRB citizen members in the pool be small enough that individual citizen members generally would serve on at least two UFRB panels per year. (page 97)

Department Response

Agree.

PARC Recommendation 4

Require each UFRB member to vote whether the officer's actions should be classified as Unfounded, Exonerated, Not Sustained, or Sustained. (page 98)

Department Response

Disagree: The current policy is working well. Each UFRB member must form an opinion about the incident being within policy or outside of policy. Depending on the UFRB recommendation the case is then reviewed by the DRB and/or the Deputy Chief or Chief of Police.

PARC Recommendation 5

Amend the Manual to provide for an additional case classification: Exonerated—Tactical Improvement Opportunity. When using that disposition, the UFRB would be required to specify in writing how the tactics employed should have been improved. (page 99)

Department Response

Disagree: The current process is working well leaving the assessment of tactics to the expertise of the Tactics Review Board.

PARC Recommendation 6

The DPD, having three years' experience with the operation of the UFRB and DRB, should formally evaluate whether the interplay between the two boards works effectively and efficiently on UFRB-eligible cases and whether the UFRB is appropriately evaluating tactics in the cases it considers. (page 101)

Department Response

Agree.

PARC Recommendation 7

When the TRB reports back to the UFRB on a case pending before the latter board, the TRB should memorialize its recommendations to the UFRB in writing. (page 101)

Department Response

Disagree: The current process is working with the TRB reporting in person to the UFRB with the Independent Monitor present. However, we are willing to again submit this recommendation to the City Attorney for a legal analysis.

PARC Recommendation 8

The UFRB should carefully and specifically consider in each case whether there are policy, training, or tactical issues as to which the UFRB should make a recommendation and, when there are such issues, to make appropriate recommendations as provided for in Manual §105.05(3). (page 102)

Department Response

Agree: As stated in current policy.

PARC Recommendation 9

Amend Manual §105.05(3) to provide that in all cases where the UFRB makes a recommendation by a split vote the alternative recommendations of the minority be documented and submitted to the recipient of the recommendation together with the recommendations of the majority. (page 102)

Department Response

Agree: Currently in policy.

II. COMMENDATIONS**PARC Recommendation 10**

The DPD should find an officer who employs poor tactics ineligible for consideration for a commendation. The degree of harm caused to a suspect should not be a factor in determining whether to award a commendation or the level of a commendation. (pages 106-107)

Department Response

Agree.

PARC Recommendation 11

Amend DPD policy to reflect that the UFRB should not recommend an individual for commendation by the Commendations Board unless it determines that the officer involved employed good to excellent tactics in the incident under consideration. (page 108)

Department Response

Agree in concept: The term should be “reasonable” tactics given the totality of the circumstances.

III. INDEPENDENT MONITOR

PARC Recommendation 12

The Independent Monitor should participate in the deliberations inasmuch as citizen members of the board do not necessarily raise the Independent Monitor's concerns. (page 98)

Department Response

Disagree: Currently the OIM has agreed present his specific case recommendations to a Deputy Chief or higher. We do not think an additional presentation in a DRB or the UFRB would be appropriate.

PARC Recommendation 13

The Independent Monitor should again be permitted to publicly express agreement or disagreement with the Chief of Police or the UFRB. (page 103)

Department Response

The Department does not have decision making authority over this recommendation. We will discuss this issue with the OIM.

Chapter 4: Incident Reviews

I. CRITICAL INCIDENT MANAGEMENT

PARC Recommendation 1

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

Department Response

Agree: We will examine the incidence and compare them to current training and practices.

PARC Recommendation 2

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

Department Response

Agree: We have a clear policy stating requirements for operational planning.

PARC Recommendation 3

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

Department Response

Agree: Supervisors are trained in critical incident management and officers have been trained, retrained and disciplined. The brief statement of fact circumstances in the report does not put the example in full context and the Departments' response to the incidents was appropriate at the time and well documented.

PARC Recommendation 4

The DPD should seek to ensure that all supervisors are equipped with the requisite skills and knowledge to effectively command their officers whenever a critical incident arises.

Department Response

Agree: Current policy.

PARC Recommendation 5

Supervisors should become involved in critical incidents at the earliest possible stage. Dispatchers should inform a sergeant as soon as any potential critical incident reports are received, and officers should be directed to inform a supervisor without delay whenever they encounter such an incident.

Department Response

Agree: Current policy.

PARC Recommendation 6

Whenever feasible, supervisors should determine the tactical and strategic approaches to be taken to critical incidents, and should direct the actions of involved officers.

Department Response

Agree: Current policy.

PARC Recommendation 7

Supervisors should be held accountable for the performance of the officers under their command whenever a critical incident occurs.

Department Response

Agree: Current policy.

PARC Recommendation 8

Supervisory training should emphasize critical incident training and the Department should ensure that supervisors consistently manage operations according to the sound principles such training promotes.

Department Response

Agree: Current policy.

PARC Recommendation 9

The DPD should ensure that such endangerment is minimized in future operations.

Department Response

Agree: Current policy.