

CITY AND COUNTY OF DENVER



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Public Statement of the Manager of Safety Regarding an Officer-Involved Shooting by Detectives Gregory Gentry and Randall Parsons on January 2, 2006

I. SYNOPSIS

Just before midnight on January 2, 2006, Detectives¹ Greg Gentry and Randall Parsons were working as part of an undercover Denver Police Department (DPD) team. Their primary responsibility was to close off the possible escape routes of a man who was about to be arrested for selling narcotics to a DPD officer. When they pulled into the north-south alley between Pennsylvania and Pearl Streets and just south of Colfax Avenue, the detectives inadvertently cut off two pedestrians, Rudy Gallegos and Frank Brabo, with their unmarked police vehicle. The two men went to opposite sides of the 15 and a half foot wide alley as the car drove between them. Mr. Brabo was on the east side, while Mr. Gallegos was about eight to ten feet away from him, on the west side of the alley. Mr. Brabo cursed the detectives and punched their car. When Detective Gentry got out to check the car for damage, he was confronted by Rudy Gallegos. Mr. Gallegos very deliberately drew an object from his waistband, held it in a pistol grip, and aimed it at the officer. Detective Gentry yelled to his partner, "he's got a gun," then ducked into the car for cover and drew his firearm. Moments later when Detective Gentry got out of his vehicle and stood up, he saw Mr. Gallegos still standing in the same position, aiming what appeared to be a weapon at the two officers. Faced with the immediacy of this threat, Detective Gentry fired at Mr. Gallegos. Even after Detective Gentry fired his first shot, Mr. Gallegos remained in the same position, holding the object in a pistol grip and aiming it at the officers. Detective Parsons also got out of the car and fired at the man who appeared to be aiming a gun at them. Both detectives directed their fire exclusively at Mr. Gallegos on the east side of the alley, who was not hit by the gunfire. However, Mr. Brabo, who was on the west side of the alley and out of the line of fire, did sustain a gunshot wound to his thigh, likely from a ricocheted bullet or bullet fragment from one of the shots fired.

¹ Both officers were patrol officers temporarily assigned to the Vice-Narcotics Bureau for detective training. Accordingly, they are sometimes referred to as Detectives by that rank.

Mr. Gallegos was subsequently arrested and admitted that he had used his cell phone to simulate having a gun. He detailed how he drew his cell phone from his waist band, purposely gripped it by the clip so that it would look more like a gun, held it out in a pistol grip and deliberately aimed it at the detectives. Mr. Gallegos was arrested for felony menacing² and Mr. Brabo was treated for the injury to his thigh. A more detailed description of this incident is provided below.

An investigation into this incident was conducted by the Denver District Attorney's Office and the Denver Police Department, with the oversight and participation of the Office of the Independent Monitor.³ Based upon the facts and circumstances of the case, the District Attorney reached a legal conclusion that no charges were warranted against either detective for shooting their weapons at Rudy Gallegos or for wounding Frank Brabo. The Chief of Police also reviewed the investigation file and determined, based upon the totality of the circumstances, that the involved officers had not violated any Departmental rule or policy. The Independent Monitor, who provided suggestions, input and consultation throughout the investigation, concurred with the determination of the Chief of Police.

After careful consideration, it is the conclusion of this Office that no disciplinary action should be or will be taken against either of the officers involved in this shooting incident on January 2, 2006. This decision is based on the independent determination of this Office, which is consistent with the determinations of the Police Department and the Independent Monitor, that these officers reasonably believed that Mr. Gallegos' actions posed an imminent threat of death or serious bodily injury, therefore justifying their response under the Denver Police Department's Use of Force Policy.

² C.R.S § 18-3-206 defines menacing in relevant part as follows:

18-3-206. Menacing. (1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing ... is a class 5 felony if committed: (a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon....

³ The mission of the Office of the Independent Monitor (OIM) is to monitor the Denver Police Department and other Denver law enforcement agencies and to provide fair and objective oversight of the uniformed personnel. OIM has been fully integrated into the Denver Police Department's officer-involved shooting procedures. OIM responds to the scene of such shootings, observes and participates in both the criminal and administrative investigations, has access to and reviews complete files and makes recommendations to fact finders and decision makers throughout the case, including making recommendations to the Manager of Safety and the Chief of Police.

II. PURPOSE OF THIS PUBLIC STATEMENT

The Manager of Safety's Office is responsible for overseeing the Department of Safety, which includes the Denver Police Department. One of the primary goals of this Office is to ensure that the citizens of Denver have the utmost confidence in their police department. In furtherance of that goal, this Office has previously released public statements in two officer-involved shooting cases in which discipline was imposed. Those public statements were intended to assist the citizens of Denver in understanding the facts and circumstances which led to the shootings and the reasons behind the disciplinary decisions in those cases. However, the Chief of Police, the Independent Monitor and the Manager of Safety aspire to fully informing the citizens of Denver whenever any officer-involved shooting occurs. In considering how to best effectuate those goals of transparency and accountability, the Manager's Office has made a commitment to begin disclosing to the public the facts and circumstances surrounding all uses of force which result in serious bodily injury or death. In that vein, we release today the first public statement in an officer-involved shooting case which has resulted in serious bodily injury, but which has not resulted in discipline.

In so doing, the Manager of Safety and the Denver Police Department share a responsibility to carefully and fairly analyze those use of force cases to determine whether Departmental policies have been followed. This analysis must be based upon a considered examination of the facts and a reasoned application of the laws, rules, policies, training principles and values that govern Denver's police officers. It is the hope of the Manager's Office that this statement will provide all of those who are interested with a clear understanding of the reasoning behind the decision reached in this case.

III. FACTUAL BACKGROUND

On January 2, 2006, around midnight, two cousins, Frank Brabo and Rudy Gallegos, left the Roslyn Bar where they had been drinking and visiting friends. By their own statements, at the time they left, Mr. Gallegos had consumed at least three shots of whiskey and three to four beers. Mr. Brabo stated that he had finished half a dozen beers and several shots of whiskey. The Roslyn Bar is on the southeast corner of Colfax Avenue and Pennsylvania Street, in the 500 block of East Colfax Avenue. Like most Denver blocks in the area, this block is split in half by a narrow alley which runs north to south. After leaving the bar, Mr. Brabo and Mr. Gallegos walked on the sidewalk along the south side of Colfax Avenue, eastbound, towards the alley.

While Frank Brabo and Rudy Gallegos were drinking in the Roslyn Bar, Denver Police Department Vice and Drug Control officers were working in the same neighborhood. Because of numerous citizen complaints about the use and sale of narcotics in the area, the team was conducting an undercover drug operation. The goal was to find willing sellers of drugs in the area and to lawfully arrest

them. Multiple officers were helping in this undercover operation. The officers who were working undercover were dressed in civilian clothes and driving undercover cars rather than marked patrol cars.

Detectives Gregory Gentry and Randall Parsons were among the officers helping with the undercover part of this operation. These two officers were assigned to the Vice/Drug Control Bureau as detectives in training. On this particular night, they were working as support, or cover, officers. Both officers were dressed in civilian clothes and assigned to one of the undercover cars. Detectives Gentry and Parsons wore their badge identifications on chains around their necks. Because they were working inside the car, and would only be out of the car if some police action, such as an arrest, took place, both officers were able to have their badges visible. The job of Detectives Gentry and Parsons on this evening was to make sure that any suspects who sold drugs to the undercover team were not able to escape. If the signal was given that meant an arrest was being made, these detectives were to work with other officers to immediately cut off all escape routes.

It was just minutes before midnight when Frank Brabo and Rudy Gallegos left the Roslyn Bar and began walking toward Mr. Gallegos' vehicle, which was parked in a lot off of the north-south alley south of Colfax between Pennsylvania and Pearl. At almost that same moment, Detectives Gentry and Parsons heard on the radio that an arrest was "going down" in the 1400 block of Pennsylvania and that they needed to get into position. They decided that a good location to prevent the suspect's escape would be in the same alley towards which Mr. Brabo and Mr. Gallegos were walking. Detective Gentry, who was driving, quickly pulled the unmarked car into the alley, just as Mr. Brabo and Mr. Gallegos were turning off the sidewalk to enter it. Detective Gentry explained that he didn't see the men until he was "almost on top of them". As the car pulled into the alley, it caused the two pedestrians to jump apart, with Mr. Brabo going to the east side of the alley while Mr. Gallegos was eight to ten feet away, against the wall on the west side of the alley. Detective Gentry noticed the two men and that one of them, who was later identified as Rudy Gallegos, was wearing a jersey shirt and had facial hair. The other man, Frank Brabo, was angered by this car cutting them off and, cursing, struck the car with his fist behind the driver's side window. Detective Gentry could hear the impact, but could not see who or what hit the car. However, Detective Parsons, in the passenger seat, both saw and heard Mr. Brabo hit the car with his fist.

Detective Gentry drove further into the alley, away from the two men, so he could get out and check for damage. When he stopped, the car was about twenty to twenty-five feet from the entrance to the alley. Although Colfax Avenue was brightly lit, the alley was darker, with only residual light coming in from Colfax Avenue. As he got out of the undercover car with his badge around his neck, Detective Gentry saw two men at the entrance to the alley. Detective Parsons saw and heard his partner immediately identify himself as a police officer. As

Rudy Gallegos was walking aggressively towards the two officers and their car, Mr. Gallegos lifted his shirt, moved his hand to his waist band and came up with an object which looked like a gun. Very deliberately, Mr. Gallegos raised the "gun" in a pistol grip and aimed it at Detective Gentry from as little as fifteen feet away.

Yelling "he's got a gun", Detective Gentry ducked back into the car briefly for protection, then immediately got out and fired his own weapon. Undeterred, Mr. Gallegos stood in the same position and continued to hold the object like a pistol and aim it at the officers. With the first shot by his partner, Detective Parsons got out of the car. He also saw Mr. Gallegos, still standing and still aiming what appeared to be a gun at them. Detective Parsons held his badge out from his neck while yelling "Denver Police," and also began to fire at the threat.

As noted above, both officers aimed their fire directly, and exclusively, at Mr. Gallegos, the man aiming what appeared to be a gun at them. In a subsequent interview, Mr. Gallegos demonstrated how he stood and faced the detectives, holding out his cell phone as though it was a gun. He also demonstrated how he ducked down and moved his body in a weaving motion as they confronted him and how, ultimately, he crouched low and scrambled around a building out of the alley. The shooting lasted just a few seconds, when Mr. Gallegos disappeared around the corner and both officers stopped shooting. Neither officer saw Mr. Brabo in the alley after seeing Mr. Gallegos apparently aiming a gun at them. Mr. Brabo was, however, injured by a probable ricocheted bullet or bullet fragment from one of the shots fired. Mr. Gallegos recalled that, before the shooting started, Mr. Brabo was on the east side of the alley across from Mr. Gallegos who was standing close to the building on the western edge of the alley. In his interviews, Mr. Gallegos consistently describes the direction of the officers' fire as pointing at him, towards the northwest side of the alley.⁴ Mr. Gallegos graphically describes bullets hitting the wall above and near him. While Mr. Brabo was off to the east, Mr. Gallegos describes hearing Mr. Brabo groan as if he was shot. Mr. Gallegos did not see Mr. Brabo get shot and did not see Mr. Brabo after the shooting started. One thing that is clear, however, is that, as both officers continued to shoot, Frank Brabo and Rudy Gallegos split up and began running.

The detectives immediately advised that they had fired shots at a man with a gun. Other officers saturated the area. Despite his attempts to flee and to resist arrest, Rudy Gallegos was arrested in the backyard of a nearby residence. Frank Brabo, however, had completely disappeared. Detective Gentry identified Rudy Gallegos as the person who pulled the gun on him. In multiple interviews, Rudy Gallegos confirmed that he was in the alley; that he wanted the people in

⁴ In one interview during which Mr. Gallegos makes a statement that Mr. Brabo pulled a gun on the officers – a statement which Mr. Gallegos later admits is false and recants – Mr. Gallegos describes some fire directed towards Mr. Brabo. However, even in that statement, Mr. Gallegos describes bullets striking around him, not Mr. Brabo.

the car to believe he had a gun; that he pulled his cell phone (silver on a black clip) from his waist band; that he held it in a pistol grip by the clip and deliberately aimed it at the officers, even before they stopped the car. He admitted that he continued to aim the cell phone, simulating a weapon, after the officers were out of the car and even after they fired. Mr. Gallegos said later that he did not initially know that these were police officers and that he thought, because of Mr. Brabo's aggressiveness, he and Mr. Brabo would have trouble with these men. According to Mr. Gallegos, Mr. Brabo causes trouble when he is drunk – a fact which Mr. Brabo himself confirmed.

Two hours later, at 2:19 a.m. on January 3rd, Frank Brabo was brought back to the scene by Rudy Gallegos' wife. Mr. Brabo had shortly before shown up at her door. In her interview with Denver Police, Mrs. Gallegos explained what Mr. Brabo told her when he arrived on her doorstep. Mrs. Gallegos stated that Mr. Brabo said that he and her husband "had been in a fist fight with some people in the alley and the other guys pulled out guns and started shooting," and that he and Mr. Gallegos agreed to split up and meet back at the Gallegos' home. Apparently, while he was walking the more than four and a half miles back to the Gallegos home, located at 41st and Osceola, Mr. Brabo realized that he had been shot through the thigh. After hearing Mr. Brabo's story, Mrs. Gallegos, became concerned that her husband had not made it home, so she put her two children in the car and immediately drove Mr. Brabo back to the scene.

When Mrs. Gallegos and Mr. Brabo arrived at the scene, Mr. Brabo informed DPD officers that he had been in the alley with Rudy Gallegos during a shooting there earlier in the evening. Mr. Brabo also explained that he thought he had been shot during the altercation. DPD officers placed Mr. Brabo under arrest, at which time he was transported by paramedics to the hospital where he received treatment for a gunshot wound which entered and then exited his thigh. In his interviews, Mr. Brabo offered several variations to the initial story which he told to Mrs. Gallegos, but eventually did admit that he had a confrontation with the people driving the car into the alley, that he did hear them say "Stop, Police," and that he thinks he was shot during the altercation. Mr. Brabo repeatedly stated that he does not recall getting shot while he was in the alley, and that he did not discover his injury until he was well away from the scene. Even when asked directly where he was when he was shot, Mr. Brabo could only speculate, saying: "I think I was in the alley or near the alley. I'm not real sure where I was, sir". Mr. Brabo also said that he was unsure of where he went when the shooting starting, because of the alcohol he drank. Although he said that he thought he ran to the west, Mr. Brabo also makes the inconsistent statement that he split up from Mr. Gallegos who did, in fact, run to the west.

It was later determined that Detective Gentry had fired six rounds from his .380 caliber semi-automatic pistol, and that Detective Parsons had fired five rounds from his 9mm semi-automatic pistol. Shell casings recovered at the scene and their location at the scene are consistent with this determination. Detective

Gentry's pistol held a total of six rounds, while Detective Parson's weapon held thirteen rounds. Although all eleven shots that were fired were aimed at Mr. Gallegos, none of those shots struck him. This may be, in part, due to Mr. Gallegos' constant movement during the incident, as he demonstrated during his interview. However, several of the rounds struck the ground and wall near him, and then ricocheted down and across the alley. Yet another round ricocheted off of the undercover vehicle. All the rounds, casings and fragments which were recovered were analyzed to determine, if possible, from which weapon they had been fired. Two complete rounds that either ricocheted off the undercover car or went into an unoccupied building both came from Detective Gentry's gun. The only identifiable bullet fragments which were recovered were located on Colfax Avenue near the west side entrance to the alley. Those two fragments came from Detective Parson's weapon. Of the eleven casings recovered, six came from Detective Gentry's gun, while the remaining five came from the weapon of Detective Parsons.

It is not possible to say with certainty which of the two detective's guns fired the round that wounded Mr. Brabo. Because the bullet or bullet fragment which struck him went completely through his leg, it was not recovered from him and identified. In situations involving this type of injury, also known as a "through and through" wound, it is not uncommon for the bullet or fragment to pass through the body and get caught in the clothes worn by the injured person. If that injured person continues walking or moving around, the possibility of the bullet dislodging from the clothing and becoming lost is quite high. In this case, by his own account, Mr. Brabo walked four and a half miles to the Gallegos home after he was wounded. The extended walk which Mr. Brabo described may well have diminished or destroyed the chance of recovering the bullet or bullet fragment that struck him. Regardless of the inability to recover or identify the bullet or fragment which struck Mr. Brabo, the Denver Police Department acknowledges that he was, in all likelihood, wounded by a bullet ricochet or fragment from officer gunfire during this incident.

As noted above, both Mr. Brabo and Mr. Gallegos admitted to drinking extensively while at the Roslyn Bar. Mr. Brabo, who was not contacted until two hours after the incident, described himself as "buzzed". Mr. Gallegos described having three shots of whiskey and three to four beers. In fact, Mr. Gallegos' blood alcohol level tested at .204, over twice the legal limit, an hour after the confrontation.

After the incident, both officers gave sworn videotaped statements. Rudy Gallegos and Frank Brabo gave several voluntary interviews, including video interviews. Mr. Brabo and Mr. Gallegos were, by their own admission, most forthcoming in their last interviews, which took place hours after the confrontation.

By all four accounts, the incident started when the two officers turned into the alley in an effort to parallel the drug arrest scene and cut off potential escape routes. Detective Gentry explained that he pulled quickly into the alley and was almost on top of the two pedestrians before he even saw them. One of the men yelled something and then Detective Gentry heard a "big smack" to the side of his car. Detective Parsons, who was in the passenger seat, clearly saw both the men standing at the entrance of the alley. He heard one of the men say "what the fuck, cuz!" or words to that effect. As Detective Gentry pulled on through the alley, Detective Parsons saw the man who had sworn at them run around the back of the vehicle and punch the back window. After they traveled another twenty-five feet down the alley, Detective Gentry stopped the car and jumped out to check for damage. Frank Brabo's statement confirmed that he was angry about being cut off by the car, and did curse at the driver, saying "What the fuck are you doing? Watch where the fuck you're going!" Mr. Brabo also said that he may have hit or kicked the car, but didn't really remember. Similarly, Mr. Gallegos remembered that Mr. Brabo was "talking shit" to the driver of the car and that the car pulled forward quickly.

When Detective Gentry got out of the car to check for damage, he saw Rudy Gallegos, who he described as the male with facial hair and the jersey shirt. Detective Parsons watched through the open driver's door as Detective Gentry showed his badge, and heard Detective Gentry say "Denver Police". In his own words, here is what Detective Gentry saw next:

I saw him pull up his shirt with his left hand and reach down into his pants' waistband with his right hand, pull out a handgun, which I thought was a black automatic handgun and start to bring it up on me". ... I can't recall if I identified myself as a Denver Police, but I remember saying "Oh my God, he's got a gun". I believed he was about to fire on me, possibly maim me, kill me and/or my partner. I realized I wasn't wearing a vest, that he was approaching me aggressively. My door was still open – went pretty much to the wall with no escape route so I pulled my handgun. As I saw his hand come up with his handgun - brought my head back and down as a reaction to having the gun pointed at me. I don't think I lost visual contact. Went down and kinda came back and at that point he was still standing. At that point I didn't notice the hand gun. I was tunnel visioned on his center mass.

Detective Parsons' explained what he saw, saying:

And, uh, the next thing I know, uh, I'm looking at Todd and he's retreating back into the car, but, and his ass hits the door and he drops down and he sounded like he was scared to death. Yells, uh, he yells, uh, "he's got a gun; he's got a gun" And then, uh, I see Todd come back up and I just hear a volley of fire. I, you know, I

couldn't tell you if he was firing. I could hear a volley of fire going on ... But my thought was get out of the car and, uh, you know, get on target and figure out what's going on.

The male with the blue jersey shirt, ... he's kind of half silhouetted at the corner of the, uh, corner of the building yelling "fuck you, cuz" and he's got his hands up like this [demonstrating a two handed grip, as if his hands are wrapped around a gun, holding his hands out at arms length in front of him]. And I can only see half of his hand and I can't tell if he's got something in his hand or not, but, you know, this is the only guy I see and I'm scared shitless now he's going to shoot me or him [Detective Gentry].

Uh, as soon as I fired the rounds, I see his head duck out and, and he's gone out of the picture.

... I thought that if I didn't fire at him, that he was either going to hit me or my, my partner with a gunshot. That's, that was my perception. That if I didn't shoot at him one of us was going to get hit. And I was in the wide open and I knew Todd didn't have any cover either.

Both detectives spoke to both the immediacy of the threat, how close to the officers the suspect was (as little as fifteen feet) and how rapidly it unfolded. As Detective Gentry said, "I know the situation didn't occur in a millisecond, but from the time I got out of the car until the alley was empty, I perceived it as going that fast." Both detectives also spoke to the lighting in the alley, explaining how it was darker than Colfax Avenue. Detective Gentry called the lighting "poor," with some ambient light from Colfax Avenue. Detective Parsons explained that it was dark in the alley, but the suspect was backlit, so there was a silhouette effect to the detective's view of him.

Rudy Gallegos made several voluntary statements. In his last interview, Mr. Gallegos finally told what he said was the truth about what happened. He admitted that although he did not have a gun, he simulated having a gun. Mr. Gallegos admitted he did so because he thought there would be trouble with the people in the car as a result of Mr. Brabo's aggressiveness and "talking shit" to them. Mr. Gallegos repeatedly explained that he started grabbing for his cell phone and simulating that he was drawing and aiming a gun before the officers ever got out of the car, "because I figured there was going to be trouble." In his words, the car started going forward and "I did start grabbing for the cell phone before they stopped and held it out like a gun and yeah, I fucked up." Mr. Gallegos talked about wanting to scare the people in the car and said that "they probably thought I had a gun." He went on to say:

When they did stop that's when I actually raised it [he demonstrates deliberately pointing at the officers]. ... They took the bluff and they shot and they stood there. I had the clip like that [demonstrates holding the cell phone clip like a pistol grip].

Yeah, I fucked up, you know, yeah, I pulled my cell phone and simulated that it was a gun because I figured there was going to be a problem. ... Me simulating a gun, that's how people get killed.

When they stopped that's when I aimed it ... kept pointing it after they shot ... I wanted to maybe get some fear into 'em, get 'em to back off ... they were correct [in assuming I had a gun].

Rudy Gallegos made clear from these statements that he was intentionally trying to put these two officers in fear for their lives before they even got out of the car. His statements are compelling confirmation of the sworn statements of the two officers.

The realistic and serious nature of the threat posed by the simulated handgun is reflected in the officers' acts of checking themselves and each other for wounds after the shooting stopped. Knowing that adrenaline can keep them from feeling a wound immediately, Detective Gentry hand checked himself for wounds and then checked on Detective Parsons. As Detective Parsons explained, "[w]e actually gave each other a hug and said is everything all right and we were all right..." It is also evident throughout their sworn video interviews that both officers truly believed that it was a real weapon that was aimed at them and that their lives were in jeopardy.

IV. INVESTIGATIVE PROCESS

A. General Overview

As set forth in detail in the District Attorney's "Officer-Involved Shooting Protocol" (hereafter referred to as the "Protocol"), when an officer-involved shooting is reported, extensive notifications are made within the Police Department.⁵ Both the First Assistant District Attorney and a Chief Deputy District Attorney are also informed immediately. Generally, the notified parties respond first to the scene. From there they go to DPD headquarters for interviews and follow-up investigation. The Denver District Attorney, Manager of Safety, Chief of Police, Independent Monitor and the Commander of Internal Affairs are also notified of the shooting and may respond to the scene and observe witnesses. The Independent Monitor is required by ordinance to respond and to attend interviews in all officer-involved shootings.

⁵ Including the Division Chief of Investigations, Division Chief of Patrol, Captain of Crimes Against Persons Bureau, Homicide Unit personnel (who are called on all officer-involved shootings regardless of whether there is a fatality), Director of the Crime Lab, Crime Lab Technicians, and others.

The investigation is primarily conducted using the same techniques that are used in criminal cases. The Denver Police Department and Denver District Attorney's Office rely upon standard investigative procedures; however, some additional procedures are utilized. In officer-involved shootings, all key witnesses and involved officers are immediately separated and kept sequestered until they have completed their video interviews. Logs are kept to document who has had contact with the involved officers, both to ensure independent statements and to avoid even the appearance of collusion or taint. The majority of the investigation is completed in the first twenty-four hours with the processing of the crime scene, the taking of neighborhood surveys to identify all potential witnesses and the completion of witness statements, including written and video statements. Additional time may be required for the testing and analysis of physical evidence and background investigations of any suspects or significant witnesses.

In August of 2005, the newly created Office of the Independent Monitor opened its doors. Pursuant to Denver Revised Municipal Code § 2-373, the Monitor's office "shall actively monitor and participate in any criminal investigation" of any shooting involving uniformed personnel,⁶ whether duty related or not; any in-custody death; or any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury, as defined in C.R.S. § 18-1-901(3)(p)." When criminal investigations are conducted in these types of cases by the Denver District Attorney, the Monitor's office is required by ordinance to "actively monitor and participate" in such investigations to the extent permitted by the DA. Thus, during interviews of uniformed personnel or civilian witnesses, the Monitor's office is allowed to observe and may suggest that certain questions be asked. However, the DA's office retains sole discretion as to the subject matter and form of all questions to be addressed to the interviewees. During the pendency of the DA's investigation, the DA's office allows the Monitor's office reasonable access to evidentiary items except where the DA's office believes that such access would jeopardize the integrity of the criminal investigation or adversely impact any potential criminal prosecution. The timing and conditions of such access are within the sole discretion of the DA's office. The Monitor's office stays involved in the case as it goes through the criminal process. The Monitor's office may recommend that the District Attorney undertake additional investigation in the criminal case. However, the conduct of the criminal investigation is within the sole discretion of the DA's office.

If, as in this case, the District Attorney does not file criminal charges against the involved officers, he sends a decision letter describing the shooting and the rationale for his decision to the Chief of Police, Manager of Safety, the Independent Monitor, the involved officer(s), the Mayor, City Council members and other appropriate persons. This concludes the criminal investigation and marks the start of the administrative investigation which is conducted by the DPD Internal Affairs Bureau.

⁶ "Uniformed personnel" refers to any sworn personnel in the Denver Police Department, regardless of whether the officer is in uniform at the time of the incident.

As opposed to the criminal investigation which determines only whether there is a provable violation of the criminal law, the administrative review is broader in scope and is intended to determine whether there is a provable violation of any Departmental rule, regulation or policy. The ordinance which created OIM requires that DPD's Internal Affairs Bureau ("IAB") "shall investigate" any officer-involved shooting and that the Monitor's office "shall actively monitor and participate" in those IAB investigations. Just as with the criminal process, the Monitor's office also stays involved in the case as it goes through the administrative process. IAB reviews the case and prepares it for submission to the Department's Use of Force Review Board for consideration and, ultimately, a non-binding, advisory recommendation to the Chief of Police as to whether any violation of the Use of Force Policy occurred.

The Use of Force Review Board examines all incidents in which serious injury or death results from any officer-involved use of force, as well as all firearm discharges by police officers. The Use of Force Review Board is made up of the four Division Chiefs of the Department, two citizen members trained and certified by the Department, and the Commander of the IAB, who serves as Chair of the Board but does not vote except in the case of a tie vote.

The OIM is required to attend the hearings, meetings, and deliberations of the Use of Force Review Board, but may not participate in deliberations. The involvement of the Monitor and his Senior Deputy is extensive – they are given complete access to all Use of Force Review Board proceedings, permitted to attend interviews of uniformed personnel and witnesses conducted by the Use of Force Review Board, and to suggest questions to be asked of the interviewees. Access to all materials provided to the Use of Force Review Board members is also given to the OIM.

Prior to issuing a recommendation, the Use of Force Review Board may ask for additional investigation. A second option available to the Use of Force Review Board is to send the case to the Tactics Review Board for an analysis of the tactical considerations involved.

The Tactics Review Board is made up of seven voting members and one non-voting advisory member appointed by the Chief of Police, all of whom are sworn police officers from inside and outside the Department with demonstrated experience in the areas of police tactics and officer safety. One of the voting members must be from the rank of Police Officer First Grade, Corporal or Technician, and no more than two members may be appointed from outside the Department. The Tactics Review Board is tasked with the responsibility of reviewing tactical situations or documented incidents involving the use of force to determine whether the tactics utilized may have deviated from Department training, policy or procedure; whether there is any need for revisions to policy, procedure or training; whether there was proper management of the situation by supervisors and command officers; and whether commendatory actions may be

warranted. A secondary function of this Board is to review and make recommendations on tactics that are being considered for adoption as a recognized tactical option.

Upon completion of its review, the Tactics Review Board may send a written report on its analysis of the case to the Use of Force Review Board. The Use of Force Review Board will then make its advisory recommendation to the Chief of Police regarding whether the use of force under consideration was in or out of policy.

After receiving the recommendation of the Use of Force Review Board, the Chief of Police undertakes his review of the case. Part of the Chief's review includes consultation with the Monitor. The Monitor provides a constant stream of recommendations as the case proceeds through the criminal and administrative processes. After completing his review, the Chief of Police can either accept the recommendations of the Use of Force Review Board or send it back and ask the Board to provide additional information. The Chief can also overrule the recommendation. In cases where the Chief finds that a rule or policy of the Department has been violated, he makes a recommendation of discipline to the Manager of Safety. By Charter, the Manager may approve, disapprove or modify the Chief's findings. This process ensures that the final decision on whether an officer violated Departmental use of force rules or policies and what the appropriate discipline should be will rest with the Manager of Safety.

In cases where the Chief of Police finds that no Departmental policy or rule was violated, the Charter does not mandate that this decision be reviewed by the Manager of Safety. However, this Manager of Safety's office has instituted a practice of reviewing all uses of force which result in death or serious bodily injury and issuing a Public Statement with regard to the facts and circumstances of the incident.

B. This Case

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Monitor's office was on hand to observe the investigation, as were members of the Internal Affairs Bureau. Interviews were observed by OIM, as required by Ordinance and permitted by the Protocol. The criminal investigation was completed and the District Attorney's decision letter was released on February 3, 2006. In the language of the statutory requirements, the District Attorney declined to file charges against either officer, concluding:

Under the facts of this case, the conduct of Detectives Gentry and Parsons was justified under C.R.S. 18-1-707(2) (a) and 18-1-704 (1). We could not prove beyond a reasonable doubt that it was unreasonable for either detective to perceive that Mr. Gallegos was armed with a deadly weapon and posed an imminent threat to him

at the instant each officer fired his weapon. Although we cannot say conclusively which officers' projectile struck Mr. Brabo, the analysis is the same for each officer. Although the individual struck was not the individual who presented the threat, the two were together and, in light of how quickly the incident occurred, we could not prove beyond a reasonable doubt that either detective acted recklessly or with criminal negligence. Therefore, no criminal charges are fileable against either Detective Gentry or Detective Parsons for the injury to Mr. Brabo.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. On March 14, 2006, the Use of Force Review Board determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Review Board are advisory in nature, and are not binding on Chief Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Monitor, Chief Whitman concluded that there were no violations of Department rules or policies in this incident and forwarded the case to the Manager of Safety's Office.

Upon receiving the case, this Office reviewed the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including the officer and witness statements, diagrams, photographs and physical evidence reports. This Office also studied the Use of Force Policy in effect on the date of the shooting and relevant training materials and academy training methods. Additionally, consideration was given to the decision of the Denver District Attorney and to the recommendations and conclusions of the Independent Monitor, the Chief of Police and the Use of Force Review Board.

V. ANALYSIS

As a general matter, the analysis of whether an officer-involved shooting is within Departmental policy focuses on three areas: (1) the reasonableness of the tactics utilized by the officer immediately prior to the shooting; (2) the reasonableness of the officer's assessment of the threat; and (3) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether there existed proof "beyond a reasonable doubt" that officers had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means

that Detectives Gentry and Parsons could not be found criminally liable unless there was proof beyond a reasonable doubt that when they fired their weapons it was unreasonable for them to believe that Rudy Gallegos presented a threat of serious bodily injury or death. In other words, the officers could only be charged criminally if there was proof beyond a reasonable doubt that they either did not really believe that Mr. Gallegos presented such a threat or, if the officers really did hold such a belief, that their belief was unreasonable under the circumstances presented.

In contrast, the administrative review process requires a determination of whether there exists a "preponderance of evidence" to show that the officers violated the Department's Use of Force Policy that was in effect on the date of the shooting. The Policy expressly incorporates the provisions of the criminal statute, C.R.S. § 18-1-707. Both the statute and the Use of Force Policy set forth the circumstances under which a police officer is justified in using deadly physical force, providing in relevant part as follows:

"A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force."

The task in this administrative review is to determine whether the evidence presented makes it more likely than not that an objective police officer facing similar circumstances would have been reasonable in believing that Rudy Gallegos was threatening him or her with deadly force. In making this determination, consideration must be given to all the circumstances, including, without limitation, the visibility at the scene, the distances between the officers and the threat, the logistics at the scene, the timing of the incident, the immediacy of the threat and the manner in which force was both threatened and used. It is necessary to gauge the behavior of these officers against what would be expected of an objectively reasonable police officer under similar circumstances. It must be determined whether, given all these circumstances, the detectives' decision to shoot their weapons at Rudy Gallegos was justified given the perceived threat posed by him. In addition, it must be determined whether Detectives Gentry and Parsons were reckless, negligent or unreasonable in striking Frank Brabo when he was not the intended target.

A. The Reasonableness of the Officers' Tactics

In potential deadly force situations, Denver Police officers are trained to employ certain tactics wherever possible or practical, and where employment of these tactics would not endanger the officers. The purpose of these tactics is to better ensure the officers' safety, as well as the safety of the public. These can include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication between the involved officers, as well as with the potential threat;
4. the use of movement to:
 - i. seek a better tactical position;
 - ii. increase the distance between the officers and the threat;
 - iii. increase the time the officers have to react to the threat.

Denver Police officers are also trained in tactics and techniques to de-escalate a potential deadly force situation.

In this case, immediately after their vehicle was struck by Frank Brabo, Detective Gentry drove a reasonably safe distance from the suspects before stopping to check for damage. Upon getting out of the car, Detective Gentry was immediately and unexpectedly challenged by Rudy Gallegos. By all appearances, Mr. Gallegos was aiming a deadly weapon at him and was about to shoot. Detective Gentry momentarily used the police car for cover, to the extent possible, communicated to Detective Parsons that the suspect was armed and then directed gunfire at Mr. Gallegos after identifying himself as a police officer. Detective Parsons, becoming aware of the gravity of the situation, also began firing directly at Mr. Gallegos after identifying himself as a police officer. Mr. Gallegos' actions, as well as all other circumstances, did not afford the opportunity to use other tactical options or to de-escalate the confrontation in any way. Therefore, this Office finds that the detectives reacted in a tactically sound and reasonable manner while facing their imminent threat.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. It is clear from the consistent statements of all four men that the confrontation between the two undercover officers and Rudy Gallegos and Frank Brabo was precipitated by Mr. Brabo's act of striking the undercover vehicle. When the officers drove further into the dark and narrow alley, and got out to look for damage, they were confronted by a man who was doing everything in his power to make them believe that he had a gun and was about to fire upon them. Backlit at the entrance to the alley so that he appeared as a silhouette, Mr. Gallegos was as little as fifteen feet away from the officers when he reached for his cell phone. Mr. Gallegos did far more than simply pull out or hold up his cell phone. Instead, he very deliberately lifted his shirt while facing the officers and grasped the silver and black phone by its belt clip so that it would look more like a gun. Mr. Gallegos also did not simply display the alleged gun – instead he held it in a pistol grip and, as he demonstrated in the video interview, raised his arm up to ensure that the officers believed that he was aiming it at them. Even after the first shot was fired, Mr. Gallegos maintained his same stance with the alleged gun pointed at the officers. Mr. Gallegos made it clear in his interviews that he

fully intended for the officers to believe he had a gun, and he admitted that it was reasonable for them to believe that he was armed with a gun.

It is further evident that the officers did, in fact, believe that Mr. Gallegos was armed with a gun and that they also believed, because of his actions (in advancing on them and bringing the "gun" up on target), that they were about to be fired upon at any moment. The officers directed their fire exclusively at Mr. Gallegos, the man who they believed posed an immediate threat. When Mr. Gallegos disappeared from the alley, both detectives stopped shooting.

The perception of Detectives Gentry and Parsons that they were in imminent danger was reasonable under the circumstances. These officers witnessed an exaggerated simulation of a gun being drawn and aimed at them. The suspect continued to aim the simulated gun at them even after Detective Gentry initially fired at him. It was incumbent upon Detectives Gentry and Parsons to make a reasonably objective assessment of the object that Rudy Gallegos was aiming at them, and they did just that. In this tense and rapidly evolving situation, the detectives' shared perception that Mr. Gallegos not only had a gun, but was prepared to use it against them with deadly intent, was objectively reasonable.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the level of force used by the officers. Both Detectives Gentry and Parsons resorted to potentially deadly physical force in firing their guns at Mr. Gallegos. As explained above, peace officers are justified in using deadly physical force when they reasonably believe that level of force is necessary to defend themselves or others from what they believe to be the imminent use of deadly physical force. The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his or her training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions, which was certainly the case in this particular incident. In those circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The Policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on

an “apparent necessity,” not an “actual necessity.” Similarly, an officer is not required or expected to wait until he is fired upon in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer’s responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The same facts discussed in the preceding section (B.) which led to the conclusion that these officers reasonably assessed a threat of deadly force are equally dispositive in the analysis of whether the degree of force used against Mr. Gallegos was reasonable and justified. The actions of Mr. Gallegos created a situation in which Detectives Gentry and Parsons believed that deadly physical force was imminent and that their lives were in danger. As Detective Gentry explained, “I believed he was about to fire on me, possibly maim me, kill me and/or my partner.” Detective Parsons said “this is the only guy I see and I’m scared shitless now he’s going to shoot me or him [Detective Gentry]. ... I thought that if I didn’t fire at him, that he was either going to hit me or my, my partner with a gunshot. That’s, that was my perception.” The facts and circumstances surrounding this event lead inescapably to the conclusion that the officers’ belief that they were in imminent danger from deadly physical force was objectively reasonable and their attempted use of deadly physical force against Mr. Gallegos was therefore justified.

Although there is no indication that Mr. Brabo also simulated being armed with a weapon or otherwise directly threatened the detectives with what appeared to be deadly physical force, the fact that he was struck by a bullet or fragment does not, under these circumstances, make that use of force reckless, negligent or unreasonable. There is no credible evidence indicating that either detective shot at Mr. Brabo. Indeed, the sworn statements of both detectives establish that they did not even see Mr. Brabo when they began shooting and that they directed their fire exclusively at Mr. Gallegos.

Denver Police officers are trained that they are responsible for all bullets fired from their guns and that they must be aware of their intended target and beyond. Officers learn that fired bullets that either miss or travel through their intended target may strike other objects or persons and may ricochet in any direction. The purpose of this training is generally three-fold:

1. to make officers aware of the danger of firing their weapons unless necessary;
2. to teach officers to be aware of their surrounding circumstances before deciding to use deadly force; and
3. to lessen the likelihood of striking an unintended target.

However, officers are also taught that these principles must be applied based upon the totality of the circumstances and balanced against the need to take immediate action to avoid the use of deadly force against themselves or others.

In determining whether the actions taken by Detectives Gentry and Parsons with regard to striking Mr. Brabo were reasonable, this Office must look to the exact actions taken and the situation these officers faced at the time.

At no time did Detectives Gentry or Parsons perceive Mr. Brabo as a deadly threat, nor did they perform any act which was either intended or reasonably likely to cause him injury. They fired only at Mr. Gallegos. The investigation did not resolve with absolute certainty which officer's projectile actually struck Mr. Brabo since the bullet or fragment passed completely through his leg, as previously discussed. Given the size and location of Mr. Brabo's wound, the ballistics evidence and the physical evidence at the scene, it is probable that when the officers fired at Mr. Gallegos, Mr. Brabo was struck by a bullet or fragment that ricocheted from the west side of the alley to the east side (a distance of approximately eight to ten feet) where Mr. Brabo was standing. While Mr. Brabo's proximity to the deadly threat acted out by Mr. Gallegos certainly contributed to his being struck, the detectives acted appropriately in directing all of their fire at the threat, and only at the threat. As detailed above, both officers reasonably believed that they were about to be killed and justifiably shot at Mr. Gallegos to stop that threat. Therefore, under the circumstances presented here, the wounding of Mr. Brabo, in and of itself, is insufficient to establish that Detectives Gentry and Parsons were acting recklessly, negligently or unreasonably.

Nor do the number of shots fired (a total of eleven) establish that the shooting was in any way reckless, negligent or unreasonable. Understandably, no rule or policy can dictate the number of shots necessary to stop a threat to officers or the public. Officers are trained to shoot at the "center mass" of the threat's body, an area most likely to incapacitate the threat. Officers are also trained to fire until the threat is incapacitated or, for some other reason, the threat no longer exists. That is precisely what happened in this case. The Detectives justifiably shot at Mr. Gallegos until the perceived gun was no longer pointed at them and Mr. Gallegos ran from the alley.

D. Findings

Therefore, it is the finding of this Office that the actions of Detectives Gentry and Parsons on January 2, 2006, were reasonable and necessary to defend against the perceived imminent threat posed by Rudy Gallegos. This Office further finds that the detectives' actions in firing their weapons on this date were not reckless, negligent or unreasonable despite the fact that a ricocheted bullet or fragment from one of their guns caused Mr. Brabo to be wounded inadvertently. The officers' actions were a direct and appropriate response to what they reasonably believed

to be the imminent use of deadly physical force against them. Given these circumstances, this Office concludes that both officers' actions were in compliance with the provisions of the Denver Police Department Use of Force Policy. It may well be that Rudy Gallegos himself best summarized why such a conclusion is compelled in this case when he said:

Yeah, I fucked up, you know, yeah, I pulled my cell phone and simulated that it was a gun because I figured there was going to be a problem. ... Me simulating a gun, that's how people get killed.

VI. ADDITIONAL ISSUES

A. Simulated or "Perceived" Weapons

As previously discussed, in this case Mr. Gallegos did not simply flash his cell phone at the officers. The use of the simulated weapon in this case was deliberate and exaggerated – every move made by Mr. Gallegos was intended to lead the officers to believe that they were about to be fired upon. However, this case does not mandate a particular result in other cases in which the use of deadly force results from a mistaken belief that a suspect is armed. There may be cases when force is used by an officer who is confronted with an object that he or she subjectively perceives to be a weapon, but that perception is not objectively reasonable under the totality of the circumstances. Conversely, in other cases such as this one, an officer's use of deadly force based on a perception that he or she is being threatened by a deadly weapon, may be determined to be reasonable, based upon the totality of the circumstances.

There are numerous factors that can be considered in reaching a determination about the reasonableness of an officer's use of deadly force in a situation involving a simulated or perceived weapon. Some of those factors can include, the information which the officer knew or should have known prior to utilizing force; any reasonable inferences that should have been drawn from that information; physical factors such as the lighting in the area, the distance between the officer and the person with the alleged weapon; the physical appearance of the alleged weapon and the manner in which the person handles it; the immediacy of the threat and the time available for reaction by the officer; the movement and activity of the person with the alleged weapon; and, other people or activities in the area and how they may interact with the situation. All these factors, and a multitude of others, can and often will impact the determination of whether an officer's use of force was reasonable under the circumstances. Consequently, based on the facts of this case, this Office believes that there is no reasonable interpretation of Mr. Gallegos' actions other than the interpretation which he intended to impress upon the officers – that he had a gun and was going to shoot them.

B. Round Accountability Beyond the Intended Target

In this case, the rounds fired by Detectives Gentry and Parsons were meticulously collected and analyzed. Some of those rounds ricocheted and traveled down the alley in which the confrontation took place. While it could not be conclusively determined where every round went, it is known that one round fired at Rudy Gallegos by Detective Gentry missed and traveled approximately one block before going through a window of a building that was unoccupied at the time. Another round missed, passed through the window of a passing RTD bus and was not recovered. Although some glass from the window sprayed a passenger, no injury could be seen on the passenger and no medical treatment was required.

There are a number of considerations to take into account in assessing the significance of the two rounds which left the alley in this case. One factor is the time of night at which this incident took place. As would be expected, shortly before midnight on a Monday evening in January there was very little pedestrian or vehicle traffic in the area. Another consideration is the location of Detectives Gentry and Parsons when they were confronted by Rudy Gallegos. Both officers were at least twenty feet down the very narrow alley. A review of the evidence shows that the walls of the buildings at the entrance to the alley severely limited the officers' range of vision – in effect, allowing them to only see that which was directly in front of them.

The impact of the speed of traffic is yet another factor to consider. When the limited field of vision described above is set against a street on which traffic is moving, the backdrop upon which the officer relies in setting up a shot can change extraordinarily quickly. A vehicle, even a vehicle as large as a bus, can come into this limited field of vision completely unexpectedly and then pass by this narrow alley in a second or less. In this situation, an officer could fire at a suspect when the officer had a clear field of fire, but have the round reach the end of the alley when a vehicle is passing.

The fluidity of the situation must also be taken into account. As demonstrated by Rudy Gallegos, he was in almost constant motion from the time he drew his alleged "gun" and pointed it at the officers. When faced with a threat of deadly physical force officers must, for the protection of the community and themselves, focus on stopping that threat. Thus, the logistics of the scene and Mr. Gallegos' continuous movements, in large part, dictated the direction and placement of the rounds fired by Detectives Gentry and Parsons.

When a suspect intends for police officers to believe that he is armed and willing to shoot at them, there is an immediate threat to public safety that the officers must stop. There is a need to balance the necessity of stopping a demonstrated threat to public safety with the concerns about the potential of bullets traveling beyond their intended target. C.R.S. § 18-1-707, which is also incorporated into the Denver Police Department Operations Manual, states in part

“Nothing in...this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain [in] custody.”

The decision of these officers to stop what appeared to be a deadly threat to the community and themselves was, on balance, a difficult but reasonable choice. This is true even though some of their bullets ultimately traveled past the immediate threat and out of the alley. Detectives Gentry and Parsons were responding appropriately under the Use of Force Policy and applicable law to what they reasonably believed to be a deadly threat. The considerations and factors outlined above lead to the conclusion that the detectives were not in violation of this section of the Policy. Nor did they intentionally, recklessly or negligently disregard a major principle of their firearms training, noted above, that they must always be aware of their target and beyond. This is a principle that must be applied in the context of the circumstances in which the officers found themselves and must be balanced against the threat posed. Given the facts and circumstances of this case, it is the belief of this Office that these two Detectives acted reasonably and in accordance with their training.

C. The Arrest of and Resistance by Rudy Gallegos

Another matter on which some comment is appropriate is the allegation by Rudy Gallegos that inappropriate force was used on him during his arrest. Mr. Gallegos did file a complaint with Internal Affairs alleging that the force used upon him during his arrest was unnecessary. That case followed the normal IAB process and was investigated under a separate case number. The Independent Monitor was given the opportunity to participate in the investigation, sit in on interviews, suggest questions and request further investigation. The Monitor determined that the investigation was fair, thorough and complete, and the case was sent to the Commanders of the two involved officers for review and recommendations. Those two Commanders determined that there was insufficient evidence to show that the force used in arresting Mr. Gallegos was inappropriate. In their individual letters to Mr. Gallegos, the Commanders outlined the evidence, including the fact that Mr. Gallegos fled the scene of a police shooting after simulating a weapon; that his actions created a very dangerous situation; that Mr. Gallegos refused commands to stop and then hid from the officers; that Mr. Gallegos violently resisted being arrested; that the officers only used as much force as necessary to gain compliance; and, that the officers were candid about having to use force and the level of force they used. The Monitor reviewed the findings of both Commanders and, in his letter that accompanied the Commanders' findings, informed Mr. Gallegos that he found "the findings to be reasonable, given all the circumstances."

It is not in the province of the Manager's Charter mandated duties to review use of force cases in which no discipline is imposed. Further, it is normally not within the scope of a public statement on an officer-involved shooting case for the Manager to address a separate IAB complaint. Nonetheless, this Office chooses to comment on this case in order to help our citizens fully understand the events of January 2, 2006. A thorough discussion of all the facts surrounding this incident will, hopefully, demonstrate the commitment of the Manager of Safety, the Chief of Police and the Denver Police Department to transparency and accountability.

As previously noted, Mr. Gallegos ran from the officers after the shooting. Just as radio dispatchers began airing that shots had been fired and an armed suspect was fleeing, another undercover officer, Detective Kenneth Berube, spotted Mr. Gallegos as he was running. Detective Berube immediately gave chase on foot, with his badge visible on a chain around his neck. Several citizens reported seeing the chase and hearing Detective Berube shout continuously, "Stop, Police." In part because of the help of these citizens, Detective Berube finally located Mr. Gallegos in the fenced-in back yard of a residence in the 1500 block of Washington. Detective Berube placed Mr. Gallegos at gunpoint and gave him repeated, loud commands to "show his hands" and to put his hands on top of his head. Instead of complying, Mr. Gallegos, who was huddled in a ball by the metal gate, kept his hands concealed under his thighs and waist, making it impossible for the detective to see if he was armed. Detective Berube approached Mr. Gallegos cautiously and, while repeatedly identifying himself as a police officer, continued to give Mr. Gallegos commands to show his hands.

It is important at this juncture to explain two points about the training which police officers receive. First, the training of all law enforcement officers emphasizes the need for them to keep a suspect's hands in sight at all times. From their first day in the Academy, through their training in the Field Officer Training program, through their refresher and study courses, every officer in the Denver Police Department is taught that they must know where a suspect's hands are at all times. One short phrase that officers know by repetition is "watch the hands; it's the hands that will kill you." The logic of this training is irrefutable – weapons are operated by the hands, physical assaults are most often committed by using the hands; in essence, the dangers that officers face come almost exclusively from the hands of the suspect. It is understandable then, that the officers who were attempting to take Rudy Gallegos into custody for what appeared to be an armed assault on a police officer, were concerned first and foremost about seeing Mr. Gallegos' hands.

The second training point is that officers are taught to use a multitude of control and arrest techniques in the apprehension of a suspect. Among the authorized techniques which officers can use are hits, strikes, kicks and baton strikes. The

purpose behind all of these approved techniques is compliance and control. The training emphasizes that as soon as the suspect is compliant, the force must stop.

Thus, when Detective Berube cornered Rudy Gallegos in the dark, fenced-in back yard, he immediately ordered Mr. Gallegos to show his hands. Even though Detective Berube was holding him at gunpoint, Mr. Gallegos refused to comply with these commands. No other officers had arrived yet. Because of the extended search for Mr. Gallegos and the darkness, Detective Berube was not even sure of his location. As the only officer on scene with what he thought was an armed suspect, Detective Berube attempted two kicks in an effort to force Mr. Gallegos to show his hands. Despite these kicks, Mr. Gallegos still refused to show both of his hands.

At this point, a uniformed police officer, Vicky Ferrari, who was trying to find the suspect heard Detective Berube's loud, repeated commands to "show me your hands" and was able to pinpoint where he was with Mr. Gallegos. Officer Ferrari tried to climb over the seven foot high, locked metal gate that was separating her from the two men. As she was climbing, the gate began to bend inward toward Detective Berube, endangering him as he was confronting Mr. Gallegos. Recognizing this, Officer Ferrari immediately jumped off the gate and kicked it open, inadvertently slamming the metal gate into the back of Mr. Gallegos' head. In his interview, Mr. Gallegos described being huddled by the fence when he is hit by a blow to the back of his head. His description is consistent with Officer Ferrari's explanation of these events.

Once in the yard, Officer Ferrari joined Detective Berube in holding Mr. Gallegos at gunpoint and giving commands for him to show his hands. Mr. Gallegos still refused to comply. Multiple other officers responded and began attempting to pull Mr. Gallegos' hands out from under his body. Mr. Gallegos responded by curling himself into a fetal position and concealing his hands. Even when officers rolled him onto his stomach, Mr. Gallegos pulled his hands under him and kicked at the officers.

The resistance by Mr. Gallegos was fierce and constant. Officers used authorized arrest control techniques in trying to determine if Mr. Gallegos was armed and to bring him under control in accordance with policy. Among those tactics were closed fist strikes to the back and baton strikes to the buttocks. The sounds created by these tactics, along with the initial inadvertent blow to Mr. Gallegos' head when Officer Ferrari kicked in the gate, Detective Berube's kicks and Mr. Gallegos' continuous movements as he resisted, could explain some of the observations of two citizens. One of the witnesses stated that, although Mr. Gallegos was resisting and difficult to control, she thought she saw the officers pushing Mr. Gallegos' head into the ground five or six times. She described hearing the thumps from the impact. The other witness stated that he saw Mr.

Gallegos stand up, raise his hands and walk towards the officers, while repeatedly saying that he hadn't done anything and he was a victim. According to this witness, the officers then took Mr. Gallegos to the ground and started banging his head into the ground. Both these witnesses were looking down into the dark yard from their second story window, but, because of the officers' moving flashlights, felt that they could see what happened.

Notably, Mr. Gallegos' own statements, as set forth in part below, refute both of these accounts. Rather than standing up and putting up his hands, Mr. Gallegos described himself as paralyzed and even demonstrated how he was curled up in the dark corner. The injuries to his head were most consistent with the metal gate striking him. The aggressive resistance that Mr. Gallegos put up may, in part, have been fueled by alcohol. As noted above, his blood alcohol level was .204, over two times the legal limit, over an hour after the shooting.

In talking about what happened during his arrest, Rudy Gallegos admitted that he ran in part because even if the two guys in the alley were not the police, he "thought the cops would come" and he's "not supposed to be around that" because he was on parole. He described hiding by the fence, balled up. He acknowledged that even though he heard the officers' repeated commands to "show his hands", he did not comply. As he put it:

"I was so scared. ... I didn't hear nothing, I didn't want to hear nothing. I just wanted not to be there. ... I was scared, I didn't want to move I didn't want to hear nothing. ... I just felt like I couldn't move. ... I felt like I was paralyzed. I wanted to say something but I couldn't, it was like I was stuck. ... I heard them but it was like I was frozen. It was like somebody had me and was holding me.

The interviewer asked Mr. Gallegos if he could understand why officers would think he was armed, given that he was fleeing from an area where shots had just been fired and given that, when they saw him, he was balled up by the fence and refused to show his hands. After admitting that it was reasonable to think he may have had a gun, Mr. Gallegos candidly said:

"Looking at that perspective you don't know what someone has ... If I was a cop, yeah, I would think so too (that I was armed), but thinking about it, yeah, if I was pursuing somebody and regardless of who it was and they're sitting in a dark area and you don't know if he is scared to death and he's not going to move, you don't know if he's going to move and do something stupid, or pull a gun or a knife or, you know, go do something stupid. You gotta approach 'em with precaution, you gotta try to make sure they ain't going to hurt you or themselves".

The Denver Police Department has an extensive policy on the levels of force which can be used in arresting a suspect. The policy incorporates C.R.S. § 18-8-803, which states in part:

"(1)...a peace officer who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen."

"(2)...'excessive force' means physical force which exceeds the degree of force permitted pursuant to 18-1-707."

C.R.S. § 18-1-707 states that:

a peace officer is justified in "using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary: (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape."

In this analysis, this Office has looked at the specific factors which are outlined in the Department's Use of Force Policy to determine whether the force used in this arrest was "objectively reasonable." In assessing these factors, this Office is guided by the principle that the reasonableness of an officer's use of force is based upon the totality of the circumstances known by the officer at the moment the force is used. With that in mind, we have considered whether the officers who attempted, and ultimately succeeded, in arresting Rudy Gallegos were confronted with the following:

- an imminent and great threat of injury;
- an actively resisting subject;
- a tense, uncertain and rapidly evolving incident;
- a severe crime; and,
- an attempt to evade arrest and flee.

An additional part of this analysis is whether, as stated in the Policy, the level of force employed was "commensurate with the threat posed by the suspect and the seriousness of the immediate situation." This objective analysis is particularly important when physical force is required in the arrest of a suspect who is believed to have threatened an officer with a gun. Because the use of physical force may be perceived, by some, as retaliation for the threat to an officer, the use of objective criteria in evaluating the use of force is essential.

It is unfortunate, but not surprising, that this entire incident unfolded exactly as Rudy Gallegos intended. His actions left the impression that he was armed and

had drawn a weapon on police officers. Rather than giving up after being fired upon, Mr. Gallegos continued to aim his alleged "gun" at officers and then fled to a dark, hidden location. Whether because of alcohol, fear, or both, Mr. Gallegos admittedly refused to comply with repeated commands from officers to show his hands and stop resisting. The situation was extraordinarily tense and fluid from the beginning. Detective Berube's attempts to take Mr. Gallegos into custody began with the Detective alone in a dark yard with a presumably violent armed suspect who refused all commands to show his hands.

When Officer Ferrari joined Detective Berube in holding him at gunpoint, Mr. Gallegos continued to resist all commands. Even when other officers tried to forcibly pull his hands out to see if Mr. Gallegos was armed, he rolled his arms under his body, kicked at the officers and engaged in aggressive resistance. The officers used control techniques authorized under the Department's Use of Force Policy. The minute that Mr. Gallegos was compliant and his hands were visible, all force stopped, in compliance with the Policy. Mr. Gallegos was provided medical treatment immediately following his arrest, as required by the Policy. In reviewing the totality of the circumstances, this Office agrees with the conclusions reached by the officers' chain of command and the Independent Monitor that the facts do not establish that the officers who arrested Rudy Gallegos used unnecessary or inappropriate force in his arrest.

VII. CONCLUSION

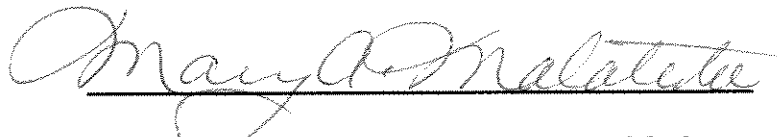
In closing, this Office wants to assure the public and the members of this Department that we have reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's office, the Independent Monitor and the Chief of Police. These consistent conclusions result from no other reason than they are dictated by the facts. It is always a concern to the Department when a police officer has to use force in the line of duty. However, in most instances, as in this case, the actions of the person against whom force was used have precipitated that use of force.

Detectives Gentry and Parsons were undertaking a routine, but potentially dangerous, duty when they were confronted by Frank Brabo and Rudy Gallegos. The alcohol-fueled actions of Frank Brabo and Rudy Gallegos created a situation with unfortunate consequences. While Frank Brabo's aggressiveness initiated the confrontation, Rudy Gallegos' decision to simulate drawing and aiming a gun at these officers escalated it to a potentially life-threatening situation. Both Mr. Brabo and Mr. Gallegos experienced significant consequences as a result of their actions. Mr. Brabo suffered a gunshot wound to his thigh, likely as the result of a bullet or bullet fragment that ricocheted in the alley. Mr. Gallegos entered a plea of guilty to Third Degree Assault (With Criminal Negligence and by Means of a Deadly Weapon), and received a 210 day jail sentence.

However, the citizens in the vicinity and the officers who were put in fear of losing their lives also suffered consequences. There can be no doubt that this was an incident which should never have risen to a level requiring potentially deadly force, but the actions of Rudy Gallegos made that necessary. Nonetheless, the citizens of Denver should know that on January 2, 2006, their police officers acted reasonably under the circumstances with which they were confronted.

A handwritten signature in cursive script, reading "Alvin J. LaCabe, Jr.", written over a horizontal line.

Alvin J. LaCabe, Jr., Manager of Safety

A handwritten signature in cursive script, reading "Mary A. Malatesta", written over a horizontal line.

Mary A. Malatesta, Deputy Manager of Safety