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**IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION**

**IN RE** : **MISC. NO. 0003211-2008**  
**COUNTY INVESTIGATING** :  
**GRAND JURY XXII** : **C-13**

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**REPORT OF THE GRAND JURY**

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**LYNNE ABRAHAM**  
District Attorney

**RECEIVED**

**JUN 29 2009**

**ACTIVE CRIMINAL RECORDS  
CRIMINAL MOTION COURT**

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**FINDINGS AND ORDER**

AND NOW, this <sup>13</sup>29 day of July, 2009, after having examined the Report and Records of the County Investigating Grand Jury XXII, this Court finds that the Report is within the authority of the Investigating Grand Jury and is otherwise in accordance with the provisions of the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541, et seq. In view of these findings, the Court hereby accepts the Report and orders it sealed until further order of the Court. At that time, the Report shall be unsealed and the Court will refer it to the Clerk of Court for filing as a public record.

BY THE COURT:

  
LILLIAN HARRIS RANSOM  
Supervising Judge  
Court of Common Pleas

I HEREBY CERTIFY the foregoing to be a true and correct copy of the original filed as filed in this office:

Date: 7/29/09

  
Active Criminal Records  
Criminal Motion Court Clerk  
First Judicial District of Pa.

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**TABLE OF CONTENTS**

<b>I.</b>	<b>Introduction to the Grand Jury Report</b>	<b>1</b>
<b>II.</b>	<b>Before the Arrest</b>	<b>9</b>
<b>III.</b>	<b>The Videotape</b>	<b>17</b>
<b>IV.</b>	<b>The Experts</b>	<b>41</b>
<b>V.</b>	<b>The Law</b>	<b>54</b>
<b>VI.</b>	<b>What We Did Not Consider</b>	<b>80</b>
<b>VII.</b>	<b>Recommendations of the Grand Jury</b>	<b>93</b>

## Section I

# Introduction to the Grand Jury Report

On May 5, 2008, police officers in the area of 2<sup>nd</sup> and Pike Streets in Philadelphia pulled three men from their car, pushed them to the ground, then beat and kicked them. The event was filmed from a news helicopter and soon was broadcast around the world as a raw illustration of police overreaction and brutality. This Grand Jury was asked to investigate the incident and to decide whether the officers involved should be criminally charged.

After a careful, thorough, and exhaustive year-long investigation, we the jurors have independently concluded that criminal action is not warranted against any of the officers. We found that the police on the scene used only the amount of force – and no more than that amount – that they reasonably believed was necessary to bring under control and into custody three suspects in a shooting who had tried to elude capture, who were resisting arrest, and who were creating a potentially significant danger to police.

We found that the design of the force applied by the police was helpful rather than hurtful; the kicks and blows, in other words, were aimed not to inflict injury but to facilitate quick and safe arrests. We found that the kind of force administered was completely consistent with police training and guidelines and the laws of the Commonwealth.

Most of the jurors first saw the video of the beatings and kickings on television before the Grand Jury investigation began. We heard commentators draw quick conclusions. They said the video spoke for itself. Opinions abounded, but not facts.

Rumor and speculation further hardened public perceptions. It was said that the three men were unarmed and restrained – even handcuffed. Even commentators who withheld condemnation speculated that the police were, perhaps understandably, taking out their frustration or retaliating for the shooting death of a fellow officer a few days earlier. There was a suggestion that the men may have been arbitrarily beaten because one resembled a suspect in the police killing. There was a notable absence of analysis by experts in the use of force.

Our first viewing of the video as a Grand Jury did not significantly alter the impressions created by news accounts. The video clip, to most of us, seemed to show an unprovoked and unnecessary assault by the very people we expect to keep the peace. We were taken aback early on in the investigation when a sergeant who supervised the stop unapologetically described the arrests captured on film as “a great job.”

A year later, however, we know that the video shown on television and endlessly recycled on the internet does not in fact “speak for itself.” The video that was broadcast to the public depicts just a moment – literally less than one minute – with no context. It does not tell us everything we need to know to judge the police officers’ actions, much less to determine whether criminal violations were involved.

We have spent the past year dissecting an uncut, unedited version of the video second by second. We have heard testimony from more than 40 witnesses, including the three men arrested. More than 70 exhibits were introduced into evidence, including photographs, sketches, police radio tapes, as well as medical records. We also heard from police eyewitnesses, who saw or heard all or part of what occurred on May 5, 2008.

In addition to fact witnesses, we heard from a number of witnesses who offered opinions and conclusions on subjects within their areas of expertise. We heard from experts in police training and practices, and in the use of force in law enforcement. We also heard from medical professionals who examined the three men following their arrest. The Grand Jurors took a field trip to the Philadelphia Police Academy, where we saw actual demonstrations of how officers are trained to think and react. And we were instructed in the law – both the statutory criminal laws of Pennsylvania and case law that fleshes out the factors that determine the reasonableness of a police officer’s use of force.

What we learned is that it is impossible to properly judge what is captured on the video itself without knowing what came before the camera started, what a soundtrack would have recorded had there been one, what the police officers knew that the television audience did not, and, most importantly, how officers are trained to lawfully carry out their duty to protect the public.

After weighing factors that casual observers of the video could not – including the officers’ assessment of the hazards they confronted, and what their training had taught them about subduing resistant suspects – it was evident to the Grand Jury that the officers on the scene reacted reasonably, and that none of them committed acts warranting criminal prosecution.

**The Grand Jury assembled its analysis based on careful scrutiny of the videotape and testimony from all of the participants and experts in the use of force.**

This Grand Jury report is divided into seven sections. **Section II**, following this introduction, will examine events that preceded the videotaped use of force by police. It will explain how the police had every reason to believe that the men they were trying to

apprehend were armed, desperate, bent on resisting arrest – and thus extremely dangerous.

Police had followed the suspects from the scene of a multiple shooting, directly witnessed by one officer and overheard by others. The suspects – in effect, caught in the act – had defied repeated commands to stop their car while driving evasively through a Philadelphia neighborhood. The officers testified that none of them had seen a gun thrown from the fleeing vehicle. The suspects ignored instructions to step out of their car after an oncoming patrol car finally blocked it. After being pulled from their vehicle, they refused to show their hands despite repeated instructions to do so. And they physically struggled to prevent the officers from handcuffing them. The suspects, in short, posed a serious danger, at least in the minds of the officers, and gave the police no choice but to use force to take them into custody.

**Section III** will examine in detail the events captured by the video. By meticulously analyzing the video, using a version of higher quality and longer duration than the one broadcast on television news, the jurors were able to set aside first impressions and isolate individual officers' actions in order to assess their appropriateness. Taken in all at once, the videotaped spectacle of a crowd of officers kicking and hitting three men on the ground seemed brutal, chaotic, and unjustifiable. But careful scrutiny of the higher-quality version of the video revealed an absence of gratuitous kicks or punches, or of blows intended to inflict harm. The many strikes against the suspects, when individually analyzed, appeared measured and carefully targeted for the purpose of bringing the men safely into compliance and custody.

Likewise, the full-length video that the jurors analyzed, because it included events before and after the struggle with the suspects, revealed more about the officers' state of mind. Under close analysis by this Grand Jury (comprised of 15 women and 8 men – 14 African-Americans, 8 whites, and 1 Hispanic), the video offered no evidence of anger, racial prejudice, or other ill will. The video's early minutes displayed a police pursuit that was orderly, cautious, and by-the-book. Its later footage showed how the suspects were treated after they had been handcuffed. Captured in more precise detail, the roles of the participants emerged clearly: It was the suspects, not the police, who were defying the rule of law.

**Section IV** of the Grand Jury report will discuss testimony presented to the Grand Jury by experts in the use of force, police trainers, and medical personnel. Police are trained to assess what levels of force, if any, are appropriate to effect an arrest and to protect themselves and others. According to the experts, the most important factor in determining appropriate use of force is a suspect's behavior – not just his alleged offense, but also his level of resistance to arrest.

A possibly armed suspect's refusal to show his hands, which is what happened with all three suspects in this case, is regarded as especially dangerous. In light of the suspects' stubborn and sustained resistance, as well as the fact that police had followed them directly from the scene of a multiple shooting, the expert witnesses concluded that the officers responded reasonably and in accordance with their training and guidelines for the use of force.

Clearly, a dozen officers could have badly hurt these suspects had they wanted to. Yet the testimony of medical experts, including the doctors who treated the suspects after

the incident, indicated only minor injuries. As such it served to confirm the law enforcement experts' finding – that the kicks and blows in this case, however troubling to the untrained eye, were aimed at achieving compliance, not injury.

**Section V** will consider how Pennsylvania law applies to this case. Under the law, the fact that a person who strikes someone happens to be a policeman does not exempt him from possible charges for assault or endangering another person. Similarly, the fact that a particular set of circumstances would warrant *some* use of force by the police does not mean that it would justify *any* level of force. If the police officers in this case had randomly pulled three men from a car and beaten them for no cause, or even if they had responded to an admittedly dangerous situation with gratuitous violence and excessive force, this Grand Jury would have been prepared to recommend aggressive prosecution. But that is not what happened.

It was the suspects' actions, not the officers' disposition, that compelled the use of force. Pursued directly from the scene of a multiple shooting, the fleeing men had to know – or certainly assume – that if they were taken into custody, they could spend many years in prison. Had the police not acted swiftly – and forcefully – as they did, and had the suspects not thrown out their firearm during the pursuit, serious injuries or worse might have resulted. The Grand Jury learned that a Pennsylvania statute allows an officer to use “any force which he believes to be necessary to effect the arrest” or “any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest.” This statute clearly applies in this case.

**The Grand Jury's conclusions regarding the police officers' actions were not affected by the Philadelphia Police Department's own disciplinary actions or by a jury verdict in the suspects' trial.**

We are aware that others have considered some of the same facts that we have and made their own decisions related to aspects of the events of May 5, 2008.

Philadelphia Police Commissioner Charles Ramsey very quickly disciplined four of the officers involved in the arrests and fired four others. And a jury has rendered a decision in the suspects' criminal trial, finding the three men not guilty of attempted murder or any other charges. In **Section VI** we will explain why our conclusions were not influenced by either of these related, but significantly different, determinations.

We did not take into account the police department's actions because we believe that our year-long investigation provided a fuller, factual basis for a decision. In addition, the Commissioner used a very different standard for discipline than we applied to determine whether the officers committed any crimes. Likewise, the jury in the suspects' trial also had a different charge and heard different evidence. And while we certainly believe that the police arrested the right men (having witnessed the shooting, then followed the suspects directly and continuously from the crime scene), our ultimate decision does not depend on such a finding. We have judged the officers' actions based on what they knew or reasonably believed at the time of the arrests. We found that the officers had ample reason to believe that the suspects were involved in the multiple shooting and were armed and dangerous. As such, the officers' response, including their use of force when the men resisted arrest, was appropriate and lawful.

**The Grand Jury does not recommend changes in use-of-force guidelines that would put police officers at greater risk than they already are.**

In **Section VII** of this report, the Grand Jury will offer recommendations based on what we have learned during our year-long investigation. More significant, however, is what we are *not* recommending. We are not calling for an overhaul of the police department's guidelines with respect to use of force. As citizens who value the security that police services provide, we want our officers to have the tools they need to quickly and safely apprehend suspects while protecting themselves and the public from harm. Caution and restraint are always necessary in determining the appropriate use of force. But we don't want officers to hesitate to use force in situations where it is needed – where force, carefully and precisely applied, may be the only alternative to someone, possibly the police themselves, getting hurt or killed.

The Grand Jury finds that the training and guidelines now in use by the Philadelphia Police Department appropriately place control over the use of force where such control belongs – in the hands of the person being apprehended. Under the guidelines, if a suspect complies with officers' commands, police may not use any force at all. If a suspect resists, then levels of force are calibrated and limited by what is necessary to safely effect an arrest. We believe these rules make sense. They are the rules according to which we have assessed the actions of the officers in this case.

## Section II

# Before the Arrests

Had the events depicted on Fox 29's video accurately reflected the entire interaction between police and the three men they arrested, our investigation would have been shorter, and our result different. But the law – as well as common sense – dictates that what came before, and what was in the minds of the police officers when they apprehended the men, are crucial to determining whether the officers responded reasonably. The video does not capture any of this, but testimony we heard did reveal the context behind the incident, including what the police knew about the men whom they pulled over.

The police beforehand were uniquely knowledgeable about these suspects – thanks to effective police work. It began when a Philadelphia officer, staking out an area where a murder had occurred the previous night, actually *witnessed* a second shooting carried out in apparent retaliation. What he saw was cold-blooded rapid gunfire into a group of men sitting on a corner. A barrage of shots rang out; three victims were hit multiple times. The undercover officer watched as the shooter and his accomplices climbed into a getaway car. Police – both undercover and uniformed officers in marked cars working together – then followed the suspects, *without ever losing sight of them*, for over two miles through city neighborhoods. The police blared their sirens and flashed their lights, but the suspects' vehicle did not pull over.

The shooting, which occurred near a boundary between two Philadelphia police districts, was broadcast over police radio to both districts and citywide. By chance,

several police units heard the broadcasts just as the getaway car came into view with other police cars in pursuit. At least six police cars fell in line and followed the fleeing vehicle until an oncoming police car finally blocked its path and forced a stop.

In short, before the police officers got out of their cars, they understood they were facing a group of suspects who had fled from a shooting – suspects who knew they were trapped, yet were still trying to resist arrest and escape. The information that the officers possessed, which placed them on high alert, is described in detail below.

**An undercover police officer witnessed the suspects shoot three people and flee in a car.**

At 9:50 pm on May 5, 2008, Police Officer Carlos Buitrago was undercover conducting surveillance near 4<sup>th</sup> and Annsbury Streets in the Feltonville section of Philadelphia. As a member of the Narcotics Enforcement Team assigned to the 25<sup>th</sup> police district, he was assisting in the investigation of a homicide that had occurred the night before. Officer Buitrago explained to the Grand Jury that many of the homicides in the 25<sup>th</sup> district are drug-related. He was conducting the surveillance of narcotics activity in the vicinity of the murder in hopes that arrests on narcotics charges might lead to information about the homicide.

Officer Buitrago testified that he was parked on the southeast corner of 4<sup>th</sup> and Annsbury Streets. He was watching four men: three sitting on steps on the northwest corner of 4<sup>th</sup> and Annsbury, the fourth leaning against a fire hydrant facing them. The officer was watching for drug transactions, but did not see any in his first five minutes of surveillance. However, a little before 10:00 pm, Officer Buitrago saw a gold Mercury Grand Marquis cross Annsbury Street traveling north on 4<sup>th</sup> Street and park on the east

side of 4<sup>th</sup> Street out of sight of the group on the corner. Three men – who were later apprehended by police as Fox 29 was filming – emerged from the car. The driver was a large man, approximately 385 lbs., identified later as Brian Hall. The other two exited the vehicle from the passenger side. They were Pete Hopkins, wearing a white shirt and dark pants, and Dwayne Dyches, who wore a red jacket with white stripes.

Hopkins and Dyches stood by the Mercury Grand Marquis while Hall, talking on his cell phone, walked into the middle of 4<sup>th</sup> Street. As Hall slowly made his way toward the corner where the four men were, two more men and two women walked south on 4<sup>th</sup> Street from Raymond Street and joined Hopkins and Dyches by the car. One of the men was wearing a tan hoodie; the other had on a white shirt and khaki pants. When Hall got close to the four men on the corner, Dyches, Hopkins, and the other two men and women crossed to the same side of 4<sup>th</sup> Street. Hopkins and Dyches positioned themselves out of view behind a tree. The women joined Hall and the three had a conversation with the four men on the corner.

Thinking that a drug sale was about to take place, Officer Buitrago radioed to his backup that some activity was taking place and to be prepared. But then he saw no signs of a drug sale. No money was exchanged; no drugs were seen. The females started to walk away, and Buitrago heard one say: “that’s crazy; that shit is crazy.” And then Pete Hopkins moved out into the street and began shooting at the four men on the corner. As Officer Buitrago watched, Hopkins shot 15 rounds at the men, first from approximately 10 feet away, and then from a bit further as he ran backward toward the Grand Marquis. Buitrago estimated hearing 8 to 10 shots, but police found 15 casings at the scene of the shooting that were later matched to a gun found along the pursuit route.

Back at the car, Hopkins met with Dyches, the man in the tan hoodie, and the man in the khaki pants. As Hall headed back to the driver-side of the car, Hopkins, Dyches, and the two others ducked out of view into an alleyway or street. A few seconds later, Hopkins and Dyches reemerged and got into the Grand Marquis. Hopkins took the front passenger seat, Dyches was in the back, and Hall drove.

Hall reversed the gold Grand Marquis briefly and then continued north on 4<sup>th</sup> Street. Officer Buitrago radioed to his backup, Officer Mario Delaurentiis, who was nearby in an unmarked car. Buitrago reported the shooting, which Delaurentiis had also heard, and described the escape vehicle and its location. Before the Grand Marquis left Buitrago's sight, Delaurentiis was on its tail. Buitrago's report of the shooting and the description of the Grand Marquis and its occupants was broadcast over the officers' unrecorded common band radio.

Officer Buitrago stayed at 4<sup>th</sup> and Annsbury to secure the crime scene. The victims of the shooting tried to leave the scene. Two were found in a pizza restaurant on 5<sup>th</sup> Street. The third was found two blocks away, at 4<sup>th</sup> and Cayuga. One of the victims was shot four times and still has a bullet in him. Another was shot in the lower body. The third victim was shot in the leg.

**For over two miles the suspected shooter and his accomplices refused to stop and attempted to elude police.** [Map of pursuit route is attached as Appendix A]

Officer Delaurentiis saw the gold Grand Marquis as it pulled out of its parking space and headed north on 4<sup>th</sup> Street just past Annsbury. After several blocks, the suspects' vehicle turned left on Wyoming Avenue, heading toward 5<sup>th</sup> Street. Delaurentiis followed in his unmarked car, without flashing lights or siren. At 5<sup>th</sup> Street, the Grand

Marquis stopped at a red light and Delaurentiis pulled up behind it. As he did, he saw two marked patrol cars at the intersection – the officers had come over from the 35<sup>th</sup> police district to investigate the gunshots they had heard. Sergeant Joseph Schiavone was standing outside one of the vehicles on 5<sup>th</sup> Street. Not wanting to alert the occupants of the Grand Marquis to his presence, Officer Delaurentiis flashed his lights quickly to get the attention of the sergeant. He showed Sergeant Schiavone his badge, pointed at the Grand Marquis, and said, “Sarge, stop that car.”

Police Officers Charles Bondiskey and Anthony Comitalo – the occupants of the other marked patrol car – were stopped at 5<sup>th</sup> and Wyoming to question a passerby about the gunshots when they heard Delaurentiis’s instructions to Sergeant Schiavone. They immediately spun around to pursue the Grand Marquis. Schiavone followed right behind. Both patrol cars had their lights flashing and sirens blaring, but Hall ignored them.

Just a block later, as the Grand Marquis turned from 5<sup>th</sup> Street onto Roosevelt Boulevard, another pair of officers – who had just heard Schiavone report gunshots over the radio – saw the Grand Marquis pass by, followed by several police cars, including their sergeant’s. Police Officers Lisa Heil Pittaoulis and Lawrence Ritchie joined the pursuit, becoming the third or fourth police car following with strobes and sirens going. (After the incident, Officer Lisa Heil changed her last name to Pittaoulis when she married a fellow officer, Demetrios Pittaoulis.)

With at least four police cars in pursuit, the Grand Marquis proceeded toward 4<sup>th</sup> Street on Roosevelt Boulevard. Officer Delaurentiis described how the rear passenger opened his door while the car was moving and the front passenger rolled down his window. But no one jumped from the vehicle.

The car pulled over and stopped near 4<sup>th</sup> and the Boulevard. The pursuing patrol cars then all stopped behind the fleeing vehicle – a procedure we were told is the safest for the police officers. The officers could not see what the occupants were doing in the car because the windows were tinted, but the back passenger door remained open and the front passenger window down. Several officers testified that they believed the occupants might be planning to run from the car or to shoot the officers. No one was coming out with hands raised. In fact, it was a trick. When some of the pursuing officers opened their own doors and got out of their patrol cars with guns drawn, the Grand Marquis took off again.

Officer Lisa Heil Pittaoulis, who was not in one of the first cars to reach 4<sup>th</sup> and Roosevelt Boulevard, testified that she and her partner, Officer Ritchie, had stayed in their patrol car because she had noticed that the Grand Marquis's brake lights were on, indicating that it was not in park. While the officers that had exited their cars rushed back into them, Heil Pittaoulis and Ritchie took over as the lead car in the pursuit. Officer Delaurentiis also continued the pursuit. He testified that the back door of the Grand Marquis remained open part way as the car proceeded along the boulevard.

Twice more the Grand Marquis slowed and acted as if it were going to pull over. The rear door would open further and the windows would go down. But then the car would continue its flight. At 2<sup>nd</sup> and Roosevelt Boulevard, the car pulled over five feet from the curb and Delaurentiis saw the front passenger throw a cylinder-shaped object and some paper out the window. (When police returned later to search the area, they found only bottles, paper, and other typical trash. The gun used in the shooting was later found elsewhere along the route – near a bridge at 2<sup>nd</sup> Street and W. Hunting Park

Avenue, dropped or thrown from the car less conspicuously than the trash. A forensic expert testified that all 15 casings found at the shooting scene came from the gun found on the Grand Marquis's escape route.)

The Grand Marquis then continued north on Roosevelt Boulevard. By this time Delaurentiis estimated there were seven or eight police cars following the vehicle. The undercover officer watched as the suspects turned east on Rockland Street and south on Mascher Street, but he dropped out of the pursuit when they reached Rising Sun Avenue. Delaurentiis then returned to the scene of the shooting where he had left his partner, leaving the pursuit to the numerous marked patrol cars.

After playing their stop-and-go mind games with the police for a mile or so, the occupants of the Grand Marquis began to flee at a higher speed, heading south on Mascher Street, Rising Sun Avenue, and 2<sup>nd</sup> Street for another mile. A long line of police vehicles followed with sirens and lights still activated. Although the suspects ran through red lights and disobeyed traffic rules, their method was less a high-speed flight than a calculated and determined defiance of police efforts to pull them over in a safe manner.

**After the escape vehicle came to a stop, police had good reason to believe that the suspected shooter and his accomplices remained intent on avoiding arrest and posed a significant danger.**

The length of the pursuit – approximately six minutes – allowed the car's occupants plenty of time to plan how they might try to avoid being apprehended or confront their pursuers. From the police officers' perspective, the suspects must have believed at the time that they were caught cold and, if taken into custody, likely would

face convictions for a shooting and possible murder. This assessment of their situation, the officers testified, made the men appear to be more dangerous.

The pursuit ended not because the suspects gave up and came to a stop, but only because their car's path was finally blocked by a police car coming in the opposite direction on 2<sup>nd</sup> Street. That is when the snippet of video, which was aired repeatedly on television and the internet, picked up the action.

The video, however, does not help a viewer understand what was in the minds of the officers as they approached the stopped Grand Marquis. It does not reflect that the police were responding to radio broadcasts describing multiple gunshots. Or that many of the officers were patrolling near where the shooting occurred and actually heard more than a dozen gunshots ring out. The video does not convey that the shooter had been seen getting into the Grand Marquis, that officers had followed the getaway car continuously from the scene of the shooting, and that none of the officers had seen any guns thrown from the car.

In fact, the police on the scene had every reason to believe that the men in the gold Grand Marquis with tinted windows were armed. The officers also had every reason to believe that the suspects, clearly desperate and defiant, were bent on resisting arrest. The suspects' erratic actions during the pursuit only heightened the officers' awareness of the dangers they faced.

## Section III

# The Videotape

The videotape that was broadcast repeatedly on television and the internet was just a fragment of a much longer recording filmed from the news helicopter. But even the full video that we first viewed as Grand Jurors was inadequate to allow us to do our job responsibly. For one thing, it had no sound. For another, crucial details were hard to see – such as when each suspect was actually handcuffed, or where a particular blow landed. It was also difficult to keep track of individual officers or to understand their roles in the arrests.

With the help of testimony from all of the officers and supervisors on the scene, we were able to reconstruct some of what would have been on a soundtrack. We also discovered that a Fox TV video of higher quality existed than the one initially provided to us by the Philadelphia Police Department. By watching the video over and over and over, with each suspect and each police officer highlighted from the moment they first appeared on screen until the last frame, we were able to isolate and consider the appropriateness of each officer's actions.

**The video reviewed by the Grand Jury showed events during the arrest in clearer detail and longer duration.**

The analysis presented here of what we saw on the video is based on a beta-format tape that the Grand Jury subpoenaed from Fox 29 part way through our investigation [Exhibit 1, available in the official court file only]. Several of the witnesses

whom we called early in the investigation commented that the DVD video we were showing them, which we had received from the police department, did not look as clear or as complete as what they had seen elsewhere. As a result, we sent a subpoena to Fox 29 asking for its best-quality recording of the incident. The beta-format tape that we received was downloaded from the computer that received the video signal straight from the TV helicopter.

This tape allowed the jurors to see things more clearly, even differently. For example, we believed originally that police officers were repeatedly kicking Brian Hall in the head and the side. Watching the beta tape, however, made it clear that the officers were actually kicking at Hall's arms (one clenched over his head, the other hidden under his body), which he was refusing to put behind his back. This was a significant difference because police are trained to strike (that is, hit, kick, or strike with a baton) muscle mass in arms and legs if necessary to gain compliance from suspects who are resisting arrest.

Also, unlike the snippet shown repeatedly on TV, the beta tape began recording the May 5 incident during the police pursuit, a minute and a half before the Grand Marquis was finally stopped. And it continued to show the scene after the suspects were restrained – until they were put in police vehicles for transport. The early minutes of the film proved helpful because they displayed an orderly, controlled, and by-the-book pursuit. As for the later footage, it showed how the police officers treated the suspects after they were safely handcuffed. The officers' behavior in the first minutes after the struggle ended was at least as important in assessing their motives and their states of mind as was their behavior in the heat of their struggle to control the three suspects.

Even with the beta tape, it was very difficult to see everything that was going on during the ugly, 57-second display of police force. It seemed a chaotic-looking three-ring mêlée. Indeed, taken in all at once, the image of a dozen police officers kicking and beating three men on the ground appeared brutal, angry, and inexplicable. However, when the jurors focused on one suspect and one officer at a time, we could see that this was not a random beating. There was actually method to the apparent madness. With narrative and context added by experts in the use of force, by police trainers, and by the participants themselves, we were able to make better sense of what the video really showed. What follows is the Grand Jury's analysis of what happened based on a meticulous review of the videotape and extensive testimony.

**The police approached the stopped car from both directions with guns drawn.**

Experts in police tactics told the Grand Jury that the preferred method of apprehending dangerous felons in a vehicle is to approach them only from the rear – something called a felony, or high-risk, car stop. But that approach did not work in this case. The driver of the Grand Marquis simply refused to stop, even though a half-dozen police cars were following it with sirens and lights on. When the driver did pull over during the pursuit and officers began to get out of their patrol cars and into position, the Grand Marquis took off. The police were finally able to stop the fleeing car – before it reached a residential neighborhood – by blocking its path from the front. Unfortunately, that left the officers in a very vulnerable position.

Once an oncoming patrol car blocked the Grand Marquis and brought it to a stop, the police inside the patrol car – two officers with Philadelphia's Narcotics Strike Force –

were straight in the suspects' line of fire. Knowing that the car's occupants were wanted for a shooting minutes before, the narcotics officers chose not to wait to see if the suspects would try to shoot their way out of an arrest. Instead they rushed toward the Grand Marquis with guns drawn.

The first out of the police car – Officer Thomas Schaffling – ran to the driver's door of the Grand Marquis, while his partner, Officer Sean Bascom, backed him up. Once officers Schaffling and Bascom committed to advancing on the car, officers from the cars that had followed the Grand Marquis also moved in on the vehicle from behind with their guns drawn. As they approached, the officers yelled at the suspects to show their hands.

The testimony of Ronald Traenkle helped us to understand the limited options that the police faced once the suspects failed to stop their car voluntarily. Mr. Traenkle is a use-of-force expert who formerly commanded patrol officers in the Bensalem Police Department and trained police officers as director of the Municipal Police Academy at Temple University. He explained that because the officers had to block the Grand Marquis's path from the front, this created “a tactically disadvantageous situation for the police.”

The suspects were in a position to shoot at the police, but the police could not fire back because their crossfire would endanger officers on the other side of the suspects. Mr. Traenkle explained the unique problems for the officers created by this situation:

It's unique from the standpoint that the suspects didn't willingly pull over to the side of the road, but only pulled over by virtue of the fact that another police officer came at him from the front. It's unique from the standpoint that that created a crossfire situation. . . .

You had officers that were in front of the suspect vehicle.  
You had officers that were to the rear of the suspect vehicle.  
Ideally what you would have is only officers at the rear.

You would then do that Riverside or high risk or felony car stop. It's many different terms, but you remain behind your vehicle. You're telling the driver to throw the keys out the window. Now you're not worried about him taking off with the car again.

You're ordering the suspects to put their hands out the window, and one at a time, you're ordering the suspects to come out of the vehicle, lock his fingers behind his head, walk backwards to you so he's not looking at you, prone down on the ground, get his arms out to the side, handcuff him, search him; that person is secured and then you get the second one out.

You couldn't do that in this case because you had officers to the front and to the rear creating a tactically disadvantageous situation for the police.

If those suspects had opened fire even to the officers to the front or to the rear, somebody is not going to be able to fire. In fact, neither is going to be able to fire without endangering the other officers at the other end. That's unique.

Tactically, while I don't like it, the officers advance on the vehicle. They really didn't have an option at that point in time, and once the officers from the . . . narcotics team advanced on that vehicle, it forces the [other] officers to advance to cover those officers.

By failing to stop when police first tried to pull them over, the suspects created the dangerous situation that forced the officers to advance on the car with guns drawn. Even then, the suspects could still have deescalated the situation, and avoided any use of force, simply by showing their hands and voluntarily exiting the car as they were instructed. But they didn't.

**The police used impact force in order to gain control and handcuff the suspects.**

It is at the point that the police started pulling the suspects from the car that the video became very hard to follow. When we carefully broke down the video, moment by moment, and compared what we saw with the testimony of the participants and the experts, what came across to us clearly is that the police, while using substantial force, were purposeful in their actions. Our analysis indicated that they did not just kick and hit the suspects indiscriminately; they aimed their kicks and strikes, as best they could, at permissible places in order to gain control of the suspects' hands and to handcuff them as quickly and safely as possible.

In fact, the 12 officers who were most involved in physically restraining and handcuffing the three suspects actually coordinated their efforts. Two or three officers stayed with each suspect from beginning to end. These officers were for the most part down on the ground, struggling to get control of the suspects' arms so they could be cuffed. Four more officers – Patrick Gallagher, Patrick Whalen, Vincent Strain (all of whom arrived on the scene behind the first patrol cars), and Lawrence Ritchie (the only officer with a collapsible asp) – floated between the suspects based on their assessment of where they were needed most. These four “floaters” did most of the kicking and hitting at arms, legs, and shoulders in order to assist the officers who were trying to get the suspects handcuffed.

Had the video included a soundtrack, it would have captured the constant stream of verbal commands that the officers issued and the suspects defied. Those on the scene uniformly testified that they and their fellow officers repeatedly and loudly instructed the suspects to show hands, to cooperate, and to stop resisting. Force became necessary only

because the suspects refused to comply without a fight. This became evident as we analyzed the video according to the distinct interactions of each officer with each of the three suspects.

### **Brian Hall**

The first suspect pulled from the car was the driver, Brian Hall. The 6'3", 385 lb. driver was pulled out by Police Officer Thomas Schaffling. Schaffling, who is 5'9" tall and weighs 160 lbs., had run to the driver's door from the passenger side of the patrol car that blocked the Grand Marquis from the front. The officer pointed his gun at the window of the driver's door, and, according to his testimony, ordered Hall to put his hands up.

Schaffling testified that it was hard to see inside the car because of the tinted windows, but when he opened the car door, Hall had his hands in his lap. The police officer kept his gun drawn as he opened Hall's door and continued to order the suspect to put up his hands. When Hall refused to put his hands up, Schaffling said he holstered his gun so that he could pull Hall from the car. Schaffling's partner, Sean Bascom, stood behind Schaffling and kept his gun drawn.

As Hall came out of the car, he fell immediately to the ground. The video shows that he broke his fall with his right hand – which had no weapon in it – and then fell on top of his right arm. His left arm cannot be seen in the video. Once Hall was on the ground, Officer Bascom stepped back and holstered his gun. While Schaffling struggled with Hall from one side, another officer, Demetrios Pittaoulis (5'7", 140 lbs.), ran to the other side to help. Pittaoulis went to work trying to pull Hall's right arm out from under

his body. Bascom assisted Pittaoulis by kicking at the upper part of Hall's right arm to try to force Hall to bring his hand out.

All of this was necessary, the jurors concluded, only because Hall refused to comply with the officers' repeated commands to allow himself to be handcuffed. Each officer, expert, and police trainer explained to us how crucial it is for officers' safety to quickly gain control of a suspect's hands. It is particularly dangerous to allow suspects to have their hands under them where they can reach into their waistbands for a gun.

In fact, two of the officers involved in this arrest, Officers Lisa Heil Pittaoulis and Thomas Schaffling, had been shot at in very similar circumstances. Officer Schaffling described the prior incident:

That was when I was assigned to the 3rd district working with Officer Heil. That's how I knew her voice on the radio [Heil broadcast the pursuit over police radio.] Again, same thing, guy just did a prior shooting, [I] started chasing the male, tackled him to the ground, hands underneath him, got his hands out from under him, he reached out from under us, he actually didn't even turn over he just laid on his stomach and reached across him and shot at Officer Heil and myself.

Schaffling pushed Heil Pittaoulis out of the way, but was himself shot and wounded.

When suspects fight an arrest and refuse to show their hands when ordered to, police officers are allowed to use force to gain compliance, or to overpower the suspect. Striking a defiant suspect to force compliance through the use of pain is an accepted, taught technique. What the video showed was a frantic, forceful effort to get Hall's hands out from under him and in to handcuffs.

As Bascom assisted Pittaoulis to secure Hall's right arm (they did succeed in getting it out from under him, but Hall kept his arm clenched tightly over his head), police officers Patrick Gallagher and Patrick Whalen joined Schaffling, who was trying

to control Hall's left arm (which appeared to be along his left side with his hand out of sight).

This was one of the worst-looking parts of the video: Whalen and Gallagher were kicking and punching at Hall's left arm and Bascom was, simultaneously, kicking at the right arm that was over Hall's head. (If one did not keep track of where Hall's arms were, it might look like Bascom was kicking the suspect in the head.) But as soon as Schaffling and Whalen succeeded in getting Hall's left arm loose, and it became apparent that he was not holding a weapon, Gallagher and Whalen stopped kicking and looked to see if their assistance was needed more urgently elsewhere. With both of Hall's hands showing, and neither holding a weapon, Whalen moved over to help secure a second suspect, Dwayne Dyches. Gallagher went to the other side of the car to help with the third man, Pete Hopkins.

If anything, officers Whalen and Gallagher left Hall too early. Not that the two officers were not needed elsewhere, but Hall was still not under control. After Whalen and Gallagher left, there were only three officers (two of them less than half of Hall's weight) struggling to get him handcuffed. Officer Schaffling got one cuff on Hall's left wrist, but Hall then wrenched his arm away and Schaffling lost hold. Schaffling, Bascom, and Pittaoulis continued to struggle to get Hall's hands behind his back and in handcuffs. At one point, the video showed Pittaoulis leaning down and shouting in Hall's ear. In his testimony before the Grand Jury, Pittaoulis explained what he was saying:

During this time, verbal commands were being given to the male to give up his arm. I went one step further with verbal commands and literally bent down and screamed it in his ear to give up his arm. For a couple of seconds I was head to head screaming to give up his hands, still did not comply, so

more force was used until eventually along with Officer Schaffling we were able to free his arms and handcuff him.

Hall's withheld arms and flailing legs confirm the officers' testimony that Hall disregarded their repeated instructions to stop resisting and to put his hands behind his back. It is also clear from the video that the officers were not strong enough to use only their hands to force Hall's arms into a position where they could handcuff him. Finally, with the use of hands, knees, and kicks as necessary (Bascom had to use more kicks after Gallagher and Whalen left), the three officers successfully handcuffed Hall. Because he was so large, they had to string two pairs of cuffs together to fit him.

As soon as the handcuffs were in place all force against Hall ended. Officer Schaffling then dragged Hall a short distance to get him away from the car. (We believe it would have been better practice to use more than one officer to move this heavy a man. Another officer did try, belatedly, to assist by lifting Hall's legs, but the suspect's face had already been dragged over the road.)

Hall was the first suspect pulled from the car, but he struggled the longest and was the last one to be handcuffed. He also was the last one shown on the video after Hopkins and Dyches had been taken away in patrol cars. Because of his size, police called for a wagon to transport him. As is routine when a suspect is injured before or during an arrest, police transported Hall to a hospital to be checked out. The video showed the police assisting Hall to his feet. The suspect then walked, with no apparent difficulty, to the police van.

Brian Hall testified before the Grand Jury. He admitted that on May 5, 2008, he was the driver of the Grand Marquis. He told how police blocked the path of his car and

proceeded to drag him from the vehicle. He said the police then beat, kicked, and stomped him.

Hall initially testified – under oath – that he first noticed police cars attempting to stop the Grand Marquis as he was approaching 2<sup>nd</sup> Street and Erie Avenue, and that he immediately pulled over. After being shown the part of the video that was not broadcast repeatedly on television – the part that showed the Grand Marquis being chased by six or more police cars with sirens blaring and lights blazing – he changed his testimony, explaining, “maybe earlier I misspoke.”

Still, Hall claimed that as soon as the police officers approached the car and opened his door, he voluntarily put his hands in the air – without even being asked to. He insisted that he never resisted arrest in any way, and that his “hands were up the whole time.” Hall testified that his arms were never under his body, even though the video showed that they were. He said that he never heard any officers telling him to cooperate or to stop resisting. He testified that despite his lack of resistance, officers beat him and used profane language.

Hall claimed that some of the officers on the scene commented that he was lucky there was a helicopter overhead – presumably a threat that the police would *really* have beaten him if they weren’t being watched. (The police officers testified uniformly that they were unaware of the helicopter’s presence, and there is no indication on the video – for example someone looking up at the sky – that anyone knew it was there.)

Hall did admit that he knew Andrew Coach, the victim of the May 4 murder that undercover officer Carlos Buitrago was investigating when he said he saw Hopkins on May 5 shoot at the four men at 4<sup>th</sup> and Annsbury Streets. Hall also acknowledged that he

briefly stopped the Grand Marquis along the pursuit route – at 5<sup>th</sup> Street and Roosevelt Boulevard – but he refused to say either why he pulled over or why he took off again when the police got out of their cars.

Hall, in fact, invoked his Fifth Amendment right not to incriminate himself and refused to answer a whole litany of questions. On the advice of counsel, he would not say whether he was in the neighborhood of 4<sup>th</sup> and Annsbury Streets on the night of May 5. He would not say when he learned of his friend Andrew Coach's murder or how he knew about it (although he did say that he was not told of Coach's death by anyone).

When asked if he and Dyches and Hopkins were discussing anything before their car was finally stopped, Hall said that they were, but he refused to say what it was they were talking about. He would not even say which of the three occupants first noticed the police following the car, or whether he himself noticed the line of police cars when he pulled the Grand Marquis over twice during the pursuit. He would not answer where he, Dyches, and Hopkins were coming from or where they were heading before the police stopped them.

Hall refused to say whether anyone threw anything from the car. And he declined to answer whether anyone in the car had a gun or not. When asked if he knew that .40 caliber cartridges were found in the Grand Marquis, Hall said that he did not. But he refused to answer whether he kept ammunition in the car or whether the ammunition that police found in the car fit a .40 caliber Glock that he admitted owning. (It did in fact fit the Glock firearm.) Hall invoked the Fifth Amendment when asked if he knew about .357 caliber cartridges that were also found in the Grand Marquis. And he would not say

where he kept his gun. (He did admit that his license to carry a firearm had been revoked.)

Hall acknowledged that none of the police officers struck him once he was handcuffed. When asked about any injuries resulting from the police officers' use of force to arrest him, Hall testified before the Grand Jury that he suffered "dry scalp," a fractured nose, and a swollen, painful leg. (Immediately after the incident, he complained to doctors at Temple University Hospital about pain in his neck and his nose – he made no mention of his leg.)

Hall was shown a copy of a report that he made to State Farm Mutual Automobile Insurance Company on May 13, 2008. It was a report written by a State Farm employee recording his conversation with the Grand Marquis's driver, "Brian." The report stated that Brian told the State Farm representative that he and two other people had been pulled over by 24 Philadelphia police officers for what Brian thought was a routine traffic stop. Brian told the representative that the police kicked and struck with batons the car's three occupants. The car was damaged, Brian reported, because the police beat the men's heads against the car's trunk and hood, causing dents and scratching. Hall denied any memory that he had made the false claims contained in the report.

The Grand Jury disbelieved Mr. Hall's testimony that he did not resist arrest. The video plainly refutes his claim that he had his hands up during the entire episode. In fact, it shows him struggling to keep his hands out of cuffs – either by holding them under his body or clenched to the back of his neck. His admission that he stopped the car and then took off again while the police were pursuing him is clear evidence of flight and confirms the testimony of the police officers.

Although we found much of Mr. Hall's testimony unworthy of belief, he did admit what the video confirmed – that no police officer kicked or hit him once he was handcuffed. This fact was crucial to our consideration of the officers' actions.

### **Dwayne Dyches**

Dwayne Dyches, the passenger in the rear seat, was more difficult to extract from the car. He was sitting in the middle of the back seat and refused to cooperate by showing his hands or exiting the car. When Officers Schaffling and Bascom rushed the Grand Marquis from the front, officers from the two patrol cars directly behind the suspects' vehicle also moved in. Officer Lawrence Ritchie circled behind the car on the passenger side while Officer Charles Bondiskey approached from the driver's side. Bondiskey, who had heard the gunshots back at 4<sup>th</sup> and Annsbury streets and had been part of the pursuit ever since, opened the rear door on the driver's side. Ritchie's partner, Officer Lisa Heil Pittaoulis, backed him up with her gun drawn.

Meanwhile, a second wave of officers arrived on the scene. Officer Robert Donnelly stepped up to the open, driver-side rear door and, with his gun drawn, ordered Dyches to get out of the car. Another officer, Vincent Strain, did the same from the other side. But Dyches remained where he was, hunched over with his hands at his waist, according to Strain. When Dyches refused to comply with the officers' orders, Donnelly reached in to pull him out. The inside of the car was not visible on the video, but Donnelly testified that Dyches resisted and tussled with the officer as he tried to get the suspect out.

As Dyches was finally pulled from the car, Donnelly was joined by Officer John Gallagher (his partner Patrick's brother). Like Hall, Dyches fell on top of his arms as he came out of the car. But instead of staying on his stomach, where he posed less of a threat to the officers, Dyches rolled over and faced them. John Gallagher testified that he heard a metal object fall on the road as they pulled Dyches from the car. The officer ordered Dyches to roll over and then kicked him three or four times to make him turn. Officer Strain, who had run around from the other side to help Donnelly and John Gallagher, also kicked Dyches two or three times around his legs. Dyches could be seen on the video continuing to flail and to fight the officers' attempts to handcuff him.

A few seconds after Strain came over to help with Dyches, Officer Whalen joined the effort. At that point, Strain testified that he heard officers on the other side of the car yelling that Hopkins, the suspected shooter, was "reaching" – in other words, possibly going for a gun. Strain explained that he thought Donnelly and Gallagher, now with Whalen's help, could handle Dyches. He believed he was needed more to help with Hopkins, so he shifted his attention to the passenger.

It was hard to see Dyches on the video because the officers often blocked the view, but at some point, Dyches was successfully turned onto his stomach again. Still, the police had not yet searched him, and his hands were, according to the officers' testimony, once again dangerously under his body and out of sight. And the suspect was not responding to the officers' repeated orders to put his hands behind his back.

Whalen struck Dyches hard with his foot six or seven times, until Dyches complied and brought his hands out from under him. As he had with Hall, Whalen

stopped kicking when he saw the suspects' hands out without a weapon. Whalen stepped back when he thought Donnelly and John Gallagher each had a hold of an arm.

But Dyches still refused to give up, and Donnelly and Gallagher, who were then alone trying to handcuff the suspect, were unable to keep control of his hands. The two of them struggled, punching and kicking Dyches with quite a lot of force – but not enough to force compliance or to stop Dyches from fighting them.

Seeing that Donnelly and Gallagher still needed help, and that Hall was less of a problem than Dyches at that point, Whalen returned to help subdue Dyches. The video showed him again using foot strikes, first at Dyches's left arm, which was tucked under him, and then in the area of his lower back and buttocks. Whalen testified that he was aiming his strikes at Dyches's arm. The officer explained that the arm was positioned on the suspect's back and that Dyches was trying to pull it away from officers who were still struggling to handcuff him.

Officer Ritchie, who was the only officer at the scene with an asp (a collapsible baton), joined in, directing crisply aimed strikes at Dyches's legs until Dyches finally gave up and brought his left arm out from under him. (His right arm was already in view, although not handcuffed.)

When the officers saw Dyches's hands, they again backed off in their use of force. Two light kicks were directed at Dyches's arm when he seemed to tighten up to resist being put in handcuffs, but the use of heavy force ended when the officers felt that the danger to them had ended. It was clear from the video when Dyches was finally handcuffed because the officers who had struggled with him on the ground stood up. The scene turned immediately peaceful.

The video depicted two additional events that we did find troubling, even if they did not rise to the level of criminality. Both involved Officer Donnelly and Dwayne Dyches. The first occurred immediately after Dyches was finally handcuffed: Donnelly put his foot on Dyches's head as a means of holding him. This action did not appear to result from anger. During his testimony, Dyches did not mention the action.

The officer did not appear to place any weight on the suspect's head or to intend any harm. Nevertheless, it seemed to us unnecessarily disrespectful. In addition, experts we questioned about it agreed that it was a bad technique for holding suspects because it risked head injury if the officer lost his balance.

The second incident occurred as Officer Donnelly was placing Dyches into the patrol car for transport. We were most troubled when we first watched the event in DVD-format, because the video made it appear as if Donnelly had intentionally, and for no apparent reason, pushed Dyches's head into the top of the car. When we watched the scene again, on the beta video, most of us agreed that it was actually Dyches's shoulder that hit the car, not his head (though one or two of us still thought it looked like his head).

Officer Donnelly testified that he shoved Dyches as he did because Dyches was resisting getting into the car. And indeed, we find support for Donnelly's contention in Dyches's own testimony that he did not bend his legs to get into the car because they hurt. Even so, we were not convinced that shoving Dyches into the side of the car was the best way to get him to cooperate.

The video did not record Dyches's conversation with Officer Donnelly after he was placed in custody, but Donnelly testified that Dyches asked him if "anyone had died." Donnelly understood Dyches to be referring to the three shooting victims, since

Dyches could plainly see that Hopkins and Hall were alive and well. While this was not a direct admission of guilt in the shooting just minutes before, it is a question that revealed Dyches's knowledge of the shooting.

Dyches also implicated himself and the others in the 4<sup>th</sup> Street shooting when he spoke to Officer Buitrago. After securing the scene of the shooting, Buitrago had come to 2<sup>nd</sup> Street and Roosevelt Boulevard in order to identify the suspects. He confirmed that Hopkins was the man he saw shoot at four men, that Dyches was with him, and that Hall was the getaway driver he had seen.

After Buitrago made the identifications, Dyches told Buitrago that Andrew Coach – the murder victim that Hall, Dyches, and Hopkins were allegedly avenging – was a relative of his. Again, this remark would make no sense if Dyches had not been part of the 4<sup>th</sup> Street shooting.

Dwayne Dyches also testified before the Grand Jury. According to his testimony, he was completely oblivious to the fact that police were following the Grand Marquis for two and a half miles (even though Hall eventually admitted that he was aware of the police presence and that the passengers were discussing the situation before they were stopped). Dyches testified under oath that he was busy text-messaging a female (whose name he said he couldn't remember) for the entire time and that he saw no lights and heard no sirens. (Hall testified that no one in the car was texting to his knowledge.) The first he knew of any police, Dyches claimed, was when they came at the Grand Marquis with guns drawn after the car finally stopped.

The Grand Jury found Dyches's testimony to be completely unbelievable. Aside from being patently absurd – and contradicted by Hall – Dyches's claim that he was too

busy texting to notice the police was disproved by a forensic expert who testified that no one had been texting during the relevant time on the cell phone seized from Dyches.

Just about everything Dyches testified to was inconsistent with the video or contradicted by other witnesses. Dyches insisted that he never opened his car door during the chase, even though several officers testified that the back door was open for much of the pursuit. Dyches said that no one threw anything from the car, but this was refuted not only by Officer Delaurentiis's testimony that he saw items thrown, but also by the fact that the gun used in the shooting was later found along the Grand Marquis's route.

Dyches claimed that, once he finally saw the police officers approaching, he immediately put his hands up in the air. He said that he kept his hands where the police could see them at all times. He did this, he said, even though he never heard the police tell him to give up his hands. He insisted that they never told him to stop resisting either. He testified that the only thing he remembered them saying was, "you nigger this, you nigger that."

Like Hall, Dyches admitted knowing the murder victim, Andrew Coach. He testified that he attended a vigil for Coach. But then he refused to say where or when the vigil was held, stating that he was invoking his Fifth Amendment right not to incriminate himself.

Also like Hall, Dyches refused to answer a slew of potentially incriminatory questions. He would not say whether he was near 4<sup>th</sup> and Annsbury Streets on the night of May 5. He would not answer whether Hopkins had a gun when he got into the Grand Marquis. And he refused to say how long he had been in the car before it was stopped, or what the occupants were discussing.

The Grand Jury heard a tape recording of a phone conversation between Dyches and his mother that was taped with the participants' knowledge while Dyches was speaking from a phone in jail. In the conversation, Dyches's mother seemed to be telling her son, using guarded language, that police had reportedly found the gun used in the shooting. She was, apparently, trying to ascertain whether Dyches had touched it and whether he had anything to worry about. When questioned about the recorded call, Dyches repeatedly claimed that he had no idea what his mother was talking about.

### **Pete Hopkins**

Except for locking his door, and forcing police to break the car window on his side, the suspected shooter, Pete Hopkins, put up the least resistance, and so required the least amount of force to arrest. Officer Lawrence Ritchie approached the front passenger-side door with his gun drawn. He tried to open the door, but was unable to. Rather than just stand helplessly outside the tinted window, not knowing what Hopkins was doing, Ritchie used his asp to break the window. While Officer Anthony Comitalo provided cover, Ritchie then opened the door and ordered Hopkins from the car. When Hopkins failed to move after several seconds, Ritchie reached in and pulled him from the vehicle.

As Ritchie got Hopkins from the car, Officer Comitalo helped to bring the suspect to the ground. In the video it appears that Hopkins tried to pull away, but the two officers were able to get him down on his stomach. Hopkins went down with his arms underneath him, and kept trying to turn on his side by propping himself up on one arm. Officer Charles Bondiskey assisted his partner by trying to get control of Hopkins's left arm

while Comitalo worked on the right. Ritchie meanwhile used his asp on Hopkins's legs, hitting him three times.

Bondiskey, with the assistance of Officer Strain (who had run over from suspect Dyches) was able to get Hopkins's left arm out with a few quick kicks. Police Officer Marion Cienkowski moved in to help hold Hopkins's left arm, but his right arm was still under him. Strain kicked at Hopkins's right arm so that the suspect could not prop himself up. After three kicks, the arm came out and Strain stepped back. Comitalo was then able to gain control of Hopkins's right arm.

While Officers Bondiskey, Comitalo, and Cienkowski tried to handcuff Hopkins, Officer Lisa Heil Pittaoulis stood near the suspect's feet. According to Officer Patrick Gallagher, he came over to help with Hopkins because he heard Heil Pittaoulis call out that the suspect was twisting his legs to try to turn himself over. Gallagher assisted by using kicks to spread Hopkins's legs and to keep them apart (thus making it harder to turn over). Heil Pittaoulis appeared to make one kicking gesture, although it is unclear whether she made contact. A few seconds later, Officer Strain gave another light kick to keep Hopkins down. Hopkins was then handcuffed and there was no further use of force.

Pete Hopkins appeared before the Grand Jury. He claimed that police officers kicked him in the head, but otherwise he invoked his Fifth Amendment privilege for all other questions. He even refused to identify himself on the videotape.

**The video revealed no evidence of anger, racial prejudice, or other ill-motive.**

The Grand Jurors did question a few of the actions taken by police during the arrests of the three suspects. But the police activity that seemed to us the least necessary,

even detrimental, had nothing to do with the officers from the Philadelphia Police Department. It was the presence of a Septa canine unit. The dog was very close to the action, yet had no apparent role. One police sergeant testified that he had to go out of his way to avoid the dog because he was worried about being bitten. The dog should have been put in its cage when it was not needed during the arrest.

In fact, what ultimately struck the Grand Jurors most about the Philadelphia police officers' actions was not what we saw on the video. It was what we did *not* see. The motives and state of mind of the police officers could best be inferred in the “down” moments, not in the 57 seconds of heated struggle shown around the world. It was when the handcuffs were finally on the suspects and the police immediately became calm and businesslike, that we could see that there was no animus toward the three suspects.

We did not see a single police officer yell at the subdued men. Nearly 20 officers were standing all around Dyches and Hall as they lay on the ground, but not a single officer “mistakenly” bumped the men or gave a stray kick. Once the suspects were secured and the threat they posed had been removed, there was no further confrontation.

From this we cannot help but conclude that the actions the officers took, no matter how brutal they may have seemed, were in fact steps taken in the course of doing their job. The police used the force they did because they believed it was necessary to safely apprehend suspects whom they understood to be violent and dangerous.

Like the section of the video that recorded what happened after the suspects had been secured, the portion of the video (also mostly unseen by the public) that recorded events *preceding* the 57 seconds of struggle also suggested purposefulness and restraint

on the part of the officers. As the use-of-force expert Ronald Traenkle watched the pursuit with us, he commented about what he saw:

When you saw the vehicles coming down the street, you had the Marquis out in front, you had the first vehicle, . . . the second vehicle is riding kind of astride the yellow line. That's the position they should be, not right on the guy's bumper, not pressuring him to higher or higher speeds, they're allowing themselves a good, safe reactionary gap, so in the event the driver of the suspect vehicle would come to a sudden stop or take some evasive maneuver or throw the vehicle in reverse, they would have time to react without winding up in an accident. *That's an indication to me they're under control, there's good emotional control going on.*

When you're involved in a pursuit, there's a tremendous amount of adrenaline going into your body. You have a tendency to lose fine motor skills, you breathe shallow, you have tunnel vision and you have to strive to control those. A good way to do that is to take a deep breath and exhale. Whether they're doing this or not I don't know, but they are clearly controlling the adrenaline dump. *They're not running out of control.*

Aside from Dwayne Dyches's claim that officers were saying "you nigger this, you nigger that," the jurors saw and heard no other evidence of racial hostility. None of the other witnesses, including two African-American supervisors on the scene, mentioned any racial comments or animus. The video is, likewise, devoid of any evidence of race-based motives. The jurors found Dyches's testimony unbelievable in almost every other aspect, and see no reason to credit his unsupported, self-serving allegations of racial slurs.

Similarly, the Grand Jury saw no evidence that the police officers were acting out of retaliation for, or frustration over, the shooting death two days earlier of a fellow officer, Sergeant Stephen Liczbinski. Liczbinski's death may well have been on the minds of some of the arresting officers. It may have heightened their awareness of the

danger they faced. But nothing we watched on the video suggests that the amount of force the officers used was influenced by Sergeant Liczbinski's death. Indeed, our analysis of the beta tape in its entirety leaves us firmly convinced that, had the suspects not resisted arrest, the officers on the scene would not have used any force.

## Section IV

# The Experts

It's not just because the videotape was incomplete or hard to follow that it didn't tell the whole story. It didn't end our inquiry because it didn't tell us what the police are supposed to do when faced with three men who, the officers believed, had just shot 15 rounds at a group of people – and who then refuse to be apprehended peacefully. Because we the Grand Jurors, as lay people, did not know the answer to this question, we turned to experts. We reviewed police training materials and heard from experts in the use of force and from the people who actually train police officers. What we learned from these witnesses is that the arresting officers in this case did essentially what they were trained to do.

The other experts from whom we heard were doctors or other medical personnel who saw Dwayne Dyches, Brian Hall, and Pete Hopkins on the night of May 5, 2008, and shortly thereafter. (Some of the evidence also came in through records, rather than the treating physician.) What we concluded from these witnesses was that none of the suspects suffered any serious injuries as a result of the force used in their arrests.

### **Police are trained to use necessary force to gain control during an arrest.**

Police training materials (Commonwealth of Pennsylvania's Basic Recruit Curriculum, Section V) inform police trainees that the law allows them to use force, among other things, to effect an arrest and to protect themselves and others. How much

force, the officers are told, depends more than anything on the suspects' actions and on their level of resistance to arrest. It is drilled into police that they are expected to gain control and that they are not supposed to engage in a "fair fight."

The training materials lay out the tools and techniques available to officers when force is appropriate. The tools are organized into levels of force on a continuum as follows:

1. Officer Presence
2. Verbal Direction
3. Restraint and Control includes the following options:
  - a. Soft Empty Hand Control
  - b. OC Chemical Aerosol
  - c. Electrical Devices
  - d. CS/CN Chemical Agents
  - e. Hard Empty Hand Control
4. Intermediate Force includes the following options:
  - a. Impact Weapons
  - b. Specialty Impact Weapons
5. Deadly Force

The materials go on to state: "The officer's justified use of force can escalate on the continuum in order to gain control, but must deescalate when the suspect's resistance ends."

The experts in the use of force testified to the Grand Jury that punches would constitute "hard empty hand control" on the continuum, while kicks and strikes with an

asp would be classified as use of “impact weapons.” (The instructors at the Police Academy classified the “tools” a little differently. “Personal weapons” such as fists and kicks were listed as tools of “mechanical compliance,” and were considered to be a lower level of force than “impact weapons.”) Either way, the officers in this case had already tried, with no success, all of the lower-level tools that they possessed. (They did not have tasers, and chemical weapons such as pepper spray were inappropriate for the situation because they could have disabled the police officers themselves.)

Another training manual (“Games Criminals Play,” put out by the Municipal Police Officers’ Education & Training Commission, Commonwealth of Pennsylvania), in a section summarizing common factors found in assaults against police officers, states: “Officers are reminded to be aggressive enough quickly enough.”

The Grand Jurors’ field trip to the Philadelphia Police Academy was particularly useful in helping us to get inside the minds of the police officers, to see the threats that they’re trained to see, and to learn how they are taught to react in different situations. The arresting officers all testified before us, and gave various explanations for why they did what they did. But before we visited the Police Academy, we had no basis to know if they were acting reasonably or not. Understanding how the officers were trained gave us a basis to judge their actions. While at the Academy, we heard:

- When a person does not comply with an officer’s commands, the officer is going to think that the person may have a weapon, so the officer will continue to use force until he gains compliance to protect his personal safety.
- Officers are trained to be especially wary of an adversary’s “red zone,” an area including the waistband, inner thigh area, and groin where weapons and contraband are most often hidden.

- Officers are trained that more force is appropriate when adversaries engage in active or active-aggressive resistance as opposed to passive resistance (for example, protesters who sit down, cross arms, and say “hell no, we won’t go”).
- Use of force is always about control and safety.
- Officers want to control the situation in order to minimize injury to self and others.
- An officer cannot handcuff an adversary until he has control of the adversary.
- If an officer only partially handcuffs the adversary and then loses control, he has given the adversary a weapon.
- Officers must always continue to verbalize what they want the adversary to do.
- If a police officer knew that a suspect had a gun and the suspect would not comply with his orders, then the situation would be at the top level of the force continuum – meet fire with fire. An officer does not always shoot, but meets deadly force with deadly force.
- A threat is over only when an adversary has complied, been handcuffed, and been searched.
- A person on the ground is always a threat until searched, because the officer does not know for sure that the adversary does not have a weapon.
  - As the level of the offense increases, the officer will want the adversary to be closer to the ground in order to gain compliance.
  - Struggling on the ground is dangerous – a prone person can roll over, kick, bring down an officer, pull a gun, or get access to an officer’s weapon.
- It is absolutely ok to have multiple officers on one suspect. Police want to outnumber the adversaries. “We don’t play fair,” it is emphasized, when the goal is to subdue a resisting suspect in order to arrest him.
- Prone-position cuffing is used when it is known or suspected that the suspect is dangerous. The suspect must spread his feet apart so that he would have to bring them back together before standing up again.
- An asp is to be used as an additional force option.
  - The preferred striking areas are as follows:
    - Preferred – arms and legs

- Intermediate – joints
- “Red zone” – head, neck, vital body areas. Officers are not trained to strike these areas, but they may be struck if the officer can justify the use of deadly force.
- Strikes are intended to get pain compliance, not injure the adversary.
- The Police Academy gives officers all of the tools to use on the streets, but once an officer is on the street, if he can articulate a justification for the force he used, he can do whatever is necessary.

**Experts in the use of force and police training testified that the police officers all acted reasonably under the circumstances.**

In addition to hearing how police are trained in general, we also considered the opinions of use-of-force experts and police trainers who viewed the Fox 29 video and read the Grand Jury testimony of the participating officers. In front of the Grand Jury, these experts viewed the video over and over, each time focusing on a separate officer. These experts found overwhelmingly that the officers involved in this arrest acted consistently with their training, in accordance with police guidelines for the use of force, and reasonably under the circumstances.

(There was only one action, by one officer, that was not something officers are trained to do – that was when Officer Donnelly put his foot on Dyches’s head after the suspect was handcuffed. Even that, they agreed, was not prohibited by police guidelines. It was just not the safest way to hold the suspect because of the risk that the officer might put too much pressure on his head and cause injury – something that Donnelly did not do.)

Officer Charles Bell III was one of the experts we heard from. He has been a defensive tactics and firearms instructor at the Philadelphia Police Academy for 11 years,

and is certified by the Municipal Police Education Training Commission as an application-of-force instructor and a firearms instructor.

Officer Bell first addressed what the training materials called “the *single most important* factor to consider in determining the amount of force to be used in a given situation” [emphasis in the original]: the suspect’s behavior. This includes not only the nature of the suspect’s alleged offense, but also his level of resistance to arrest. In assessing these factors, Officer Bell pointed out that, from the officers’ perspective, the suspects in this case had just been involved in a triple shooting. The shootings had been witnessed by a police officer, and many of the officers on the scene had actually heard the gunshots and pursued the getaway car immediately.

The suspects’ resistance started when they refused to pull over after police signaled with sirens and flashing lights. The suspects then heightened the stakes by their unpredictable behavior – slowing down and taking off again, opening and closing doors and window, and luring the police from their cars in what Bell referred to as a “fake-out technique.” By using the fake-out, the suspects foiled the officers’ attempts to conduct the type of stop that is safer for police – the high risk, or felony, stop. Given all of these factors, Bell testified that the officers “should be contemplating the use of deadly force.”

The suspects’ resistance continued after the stop. They refused to comply with officers’ verbal commands to show their hands or to get out of the car. They had to be forcibly removed from the vehicle. And once they were on the ground they continued to resist: They kept putting their arms under their bodies and refused to show their hands or to put them behind their backs as instructed. Dyches and Hopkins would not stay prone

on the ground and kept trying to turn over or get up. All of these factors were significant in determining what level of force was justified.

Officer Bell, discussing Dyches, explained how officers are trained to think when facing resistance from suspects:

He would fall under active resistance [one of the levels of resistance].

Again, just the need to be extracted physically, the refusal to show hands, that the officers had to use the foot strikes to the arms, that they had to use repeated foot strikes before he would finally come and bring his hands from underneath would give many officers, myself included, the concern that this man was still potentially armed, that he had something to hide, that several officers were striking him on the arms, and he still refused to bring those arms out.

What we're trained in thinking, based on everything with that pursuit, is he's getting ready to pull something out.

Given these facts, Officer Bell found that the officers' use of force was consistent with their training and that none of them went beyond an appropriate level of force.

Although kicking someone on the ground may look excessive to the layperson, Bell testified that officers are taught that they may use kicks and other impact strikes in order to force a resisting suspect to show his hands. He explained why the officers in this case might have chosen to use foot strikes:

The fact is the leg is longer. You can use that as opposed to having to reach down to a person at the time. In situations where I may order a person to get down on the ground, let me see your hands and they don't do so, coupled with the situation here, the potential for the person to use deadly force, officers would not reach in and grab a hold of a person at that time because you don't know what they have in their hands, especially if they are laying on their hands.

Bell explained that if a person is resisting being handcuffed, “it’s very, very difficult just to pull that arm out, almost impossible even with several officers.” He emphasized that kicks used to force a suspect to “drop” or give up his hands are intended to be temporarily disabling, not to cause serious damage.

Ronald Traenkle, the expert on use of force, came to the same conclusions as Officer Bell. He based his opinion on multiple viewings of the video; a review of the officers’ testimony before the Grand Jury; materials gathered by the Philadelphia Police Department’s Internal Affairs Division; and a review of reports prepared by the officers relating to their use of force during the arrest. Mr. Traenkle’s analysis of each officer’s actions will be discussed in Section V, but his overall conclusion was that the officers’ use of force was “consistent with generally accepted professional standards” and was “reasonable and proper.”

Mr. Traenkle cited the high level of threat to the police. He emphasized the need to look at the situation from the police officers’ point of view:

What I want you to do is put your self in the mindset of one of the officers approaching that vehicle; it’s wanted for a shooting, they have not surrendered to police authority by red lights and sirens, not surrendering to police saying come out of the car, put hands in the air, and now you’re walking up to that car and you can’t see in it. Think what’s going through your mind.

As Mr. Traenkle put it: “The officers’ threat radar is off the scale at this point.”

Mr. Traenkle also reviewed with the Grand Jurors the use-of-force continuum in order to analyze the officers’ actions. He noted that the officers had obviously shown their presence, and that their verbal commands had failed to gain compliance. He explained why tools such as pepper spray and tasers, which can be used in some

situations to induce “pain compliance,” were either not appropriate in this case or were unavailable. Other forms of mechanical compliance such as wristlocks and arm bars require control of the suspects’ arms, which was what the officers were trying to gain. Where, as here, the other tools have not been successful or are unavailable or inappropriate, the officers need to move on to “impact” force.

Impact-level force, Mr. Traenkle instructed us, can be delivered by fist, knee, elbow, foot, or baton. Its severity is judged not by the instrument, but by the target. Strikes to soft tissue areas such as buttocks, upper arms, backs of shoulders, forearms, and backs of calves – “green” areas in police jargon – are considered the lowest level of impact force. Strikes to joints such as elbows, wrists, and knees, which can cause fractures and more serious damage, constitute a higher level of force. Mr. Traenkle viewed the beta video carefully and determined that all of the officers in this case were directing their strikes to soft tissue areas of the suspects’ arms, legs, and buttocks.

The other factor that Mr. Traenkle found to be crucial was that the officers deescalated when they should have. Once the suspects were handcuffed, all force ended immediately.

One of the things that concerned us most when the Grand Jury first viewed the video was the sight of Officer Ritchie striking two of the suspects forcefully with the asp. Mr. Traenkle described the officer’s actions in this fashion:

For instance, when this officer is up here with the asp baton, the one that broke the windows, you see him coming down and down and down, well it looks terrible, there’s no two ways about it. To the untrained eye it looks terrible, or to the casual observer. But all of those blows were to the back of the man’s calf. He’s at the lowest level of impact force. Though he’s high up on the force continuum, he’s at the lowest level of [impact] force.

They are insignificant blows from that standpoint. They're not going to break anything and cause injury. Are they going to hurt? Positively. Are we trying to force him to comply by causing this person pain? Absolutely. Unfortunately, that's the nature of the game sometimes.

One of the things that's important to realize, once the suspects were under control and the hands were secured with handcuffs, you see all of the use of force deescalate and come down to nothing but straight open-hand controls.

Mr. Traenkle expressed some concern about Officer Donnelly's placement of his foot on Dyches's head after the suspect was handcuffed. The expert acknowledged that the practice is not forbidden by any guidelines, but said that he personally does not like that type of hold. We asked what he thought about Donnelly bumping Dyches against the patrol car twice when he was trying to get the suspect into the vehicle. Mr. Traenkle said that he did not consider the light bumps to be inappropriate, since Officer Donnelly said that the suspect was being resistant. (Dyches said that he was not bending his legs to get into the car because they hurt.)

Lieutenant Edward Lang, a trainer at the Philadelphia Police Academy, testified specifically about Officer Ritchie's use of the asp. In assessing the officer's actions, Lieutenant Lang focused on the same considerations that Mr. Traenkle did: the threat known to the officers, the suspects' failure to comply with verbal commands, the suspects' refusal to show their hands, the target of officer Ritchie's strikes (the back of the suspect's calves), and the fact that the use of force ceased when the suspects complied. Lieutenant Lang explained his opinion as follows:

- A. I believe based on his reports and based on what I saw, that [Officer Ritchie] used the sufficient amount of force needed and conducted himself based on his training.

Q. Why is that, if you can elaborate on that and give me and the jury some details why you came to that conclusion?

A. The state of mind during the incident is that the defendants are armed. He approaches the vehicle, tries to give verbal commands to get somebody out of the car, which are not complied with. The doors are locked. He gets them out of the car. Plus, the windows are tinted dark where you can't see anything. . . .

When he gets the gentlemen out of the car, he gives them verbal commands; get on the ground, and show me your hands. While he was going to the ground, the person went on the ground with their hands underneath. [Ritchie] gave baton strikes until the person complied and he saw his hands, then he stopped. If he wanted to continue, if he had anything else in mind, he could have continued, but he stopped because his training says once his hands are under control, I don't have to issue pain compliance anymore.

**Medical professionals established that the suspects incurred no serious injuries.**

Testimony by use-of-force experts to the Grand Jury made the point that if these 12 officers had wanted to inflict severe injuries, they could have. But none of the suspects suffered such injuries. Two doctors who treated the suspects at Temple University Hospital immediately after the incident were called to testify. They had no independent recollection of the suspects' visit to the hospital, but they reviewed their records and explained them to us. None of the injuries was serious enough to require x-rays or further tests of any kind. The suspects were at the hospital for a little over an hour.

The medical records for Pete Hopkins recorded that his main complaint was an abrasion, or scrape, on his forehead. Joint pain was also noted, as was an abrasion to his right elbow, and contusions to his left knee/upper leg area and right calf. The records state that there was nothing remarkable about his injuries and that the only treatment was

application of an antibiotic cream. The nursing records noted that he was awake, alert, and oriented.

Dwayne Dyches's records show that he complained of right knee pain, but that he walked into the emergency room. The physical exam showed bumps and bruises, but no open or bleeding injuries. He had a swelling and a small abrasion on his right knee, and swelling and redness on his forehead. None of the injuries was severe enough to require treatment other than a tetanus shot and Ibuprofen.

Brian Hall's records list his chief complaint as assault with fists to back and face. He had swelling and redness on his forehead and nose, and a small, superficial abrasion on the top of his hand. Hall was diagnosed with a broken nose, based on reported tenderness and some swelling, but not an x-ray. A week later, Physician's Assistant Kristine Trotter examined Hall at Lankenau Hospital and found his nose to be "normal." He was given a tetanus shot and a prescription for Ibuprofen.

An assistant medical examiner, Dr. Bennett Preston, M.D., reviewed the medical records of the three suspects and photographs of their injuries taken the night of May 5. He noted the same abrasions recorded in the medical records and gave an opinion that most of the suspects' abrasions were consistent with being pressed against the pavement.

Dr. Preston also identified some injuries that appeared to be the result of blunt force impact. Regarding Hopkins, he noted that a bruise on his calf could have been caused by a nightstick or a punch. He also offered his opinion that the bruising around Hall's eyes was caused by possibly two punches. Dr. Preston did not, however, see any evidence of a broken nose. And Hall's facial injuries were consistent with the testimony of officers who acknowledged that, while they were aiming strikes at his arm, they may

have missed once or twice and struck Hall's face. The video showed that Hall during the struggle had his clenched arm next to his face.

Dyches had two injuries that he thought were caused by strikes – one on his lip, consistent with a punch, and one on his left shoulder. Dr. Preston testified that he saw no injury consistent with Dyches's head being banged against the roof of the patrol car.

The testimony of the use-of-force experts made clear to the Grand Jury that the force used by the police officers was intended to induce compliance, not injuries. The testimony of the medical experts, indicating that the suspects suffered no severe or sustained injuries, confirmed that this intent was carried out.

## Section V

# The Law

Had the police officers in this case simply dragged Brian Hall, Dwayne Dyches, and Pete Hopkins from their car for no legally justifiable reason, the ensuing blows would surely have constituted an assault. And we, the Grand Jurors, would be calling for prosecutions. But that is not what happened. Hall, Dyches, and Hopkins were not just three random men whom the police decided to chase for two and a half miles in order to beat. They were suspects – extremely strong suspects – in a triple shooting witnessed by a police officer just minutes before.

No matter what crimes the suspects may have committed, had the officers struck them for any purpose other than to bring them into custody, or continued to hit and kick them after they were handcuffed, the Grand Jury would have recommended criminal charges against the police. Again, however, that is not what happened.

The jurors were told that, in a case where police officers use force, a determination whether to recommend charges against the police requires a two-step analysis. First, we had to determine whether the police officers' actions made out the elements of a particular crime. Next, we were instructed that if we found that the officers' actions could constitute a crime, we should then determine whether those actions were nevertheless justified under the law. The crimes we were asked to consider – to decide whether or not to recommend charges against any of the officers – were Simple Assault (18 Pa. C.S. §2701) and Recklessly Endangering Another Person (18 Pa. C.S. §2705).

Simple assault, we were told, can be established when a person either attempts to cause, or causes, bodily injury. Bodily injury was defined for us as impairment of physical condition or substantial pain. Simply applying the facts to this definition, it seems evident that at least some of the police officers did cause substantial pain to the suspects and perhaps even some temporary physical impairment. Most of the officers readily admitted that they used accepted “pain compliance” techniques in order to try to induce cooperation so that they could safely secure the resistant suspects. In deciding whether or not to recommend charging any officers with assault, we therefore had to decide whether their actions that caused pain or slight injury were legally justified.

With respect to recklessly endangering another person, we found that the officers’ actions did not make out the elements of that crime. We were instructed that in order to recommend charges for reckless endangerment, the evidence would have to show: (1) that the officers recklessly engaged in conduct (2) that placed or may have placed Brian Hall, Dwayne Dyches, and/or Pete Hopkins in danger of death or serious bodily injury. We find that the officers did not act recklessly (involving a gross deviation from the standard of conduct that a reasonable person would observe in that person’s situation), nor did they put the suspects in danger of death or serious bodily injury. In any case, we would find the officers’ actions legally justified, as explained below.

Whether a police officer’s use of force is justified or not is governed by statute in Pennsylvania. Section §508 of the Pennsylvania Crimes Code states:

**Use of force in law enforcement**

(a) PEACE OFFICER'S USE OF FORCE IN MAKING ARREST.--

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful

arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

**Police used the amount of force that they reasonably believed was necessary to bring the suspects under control.**

It was the opinion of expert witnesses who testified before the Grand Jury that the circumstances known to the police officers when they approached the Grand Marquis on 2nd Street near Erie Avenue would have justified even deadly force. That the officers holstered their guns, and reached into the car unarmed in order to pull out the suspects, was in fact a brave effort to use less force than they might have. All of the experts agreed – and we do as well – that the police officers used the amount of force that they reasonably believed was necessary to effect the arrests.

The law and the police officers' training materials spell out certain criteria to help determine what is an appropriate level of force when making an arrest. Prominent among these are: the severity of the crime for which the suspect is being apprehended, the threat posed to the officers and others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. In relation to all of these factors, the officers in this case were well within reason in using the amount of force they did: the crime was

attempted multiple murders (although at the time of the arrests, probably neither the officers nor the suspects knew whether the attempt had been successful); the suspects were seen getting into the Grand Marquis directly after the shooting, and no one saw them drop the gun from the getaway car before it was stopped, making the presence of at least one firearm extremely likely; and the suspects were attempting to evade arrest both by fleeing and by actively and strenuously resisting arrest.

These factors persuade us that it was reasonable for the officers to believe that they needed to use the level of force they did in order to successfully apprehend the suspects. And the plain facts demonstrate that the officers were right: It took all the force they used to secure the three men, and they used force only because nothing else worked.

The police started out with verbal commands to try to get the suspects out of the car and to show their hands (this was after sirens and a pursuit had failed to induce compliance). When the suspects remained in the car with their hands hidden or in their laps, the officers had to pull them out. Verbal commands to stay on their stomachs, to stop resisting, and to put their hands behind their backs were all flouted as well.

Even once the officers started using some force to try to control the suspects' arms, they had trouble because the suspects kicked and held their arms under their bodies. It is clear from the video that the officers down on the ground were using all their strength trying – unsuccessfully – to pull the suspects' arms out so they could handcuff them. It wasn't until other officers helped out, by striking and kicking at the suspects' arms and legs, that the officers on the ground were finally able to gain control.

Even with the significant amount of force used, it still took the officers almost a full minute to get the suspects under control. It is not at all clear what would have been

gained had the officers used less force, requiring them to struggle longer to gain control, and thereby increasing the risk to everyone's safety. If the gun had not been discarded along the car's escape route, and the officers had not acted as they did to control the situation as quickly as possible, the results could have been dire.

**The Grand Jury weighed criminal charges against six of the police officers.**

The Grand Jurors were asked to consider charges against six of the officers who used force. We were told in advance that the District Attorney's Office had independently cleared the other officers at the scene, finding that the evidence did not support criminal charges. We understand that this advance decision not to prosecute was necessary in order to gain the testimony of those officers before the Grand Jury. Having nevertheless reviewed the actions of the cleared officers, we agree with the District Attorney's decision that they should not be charged with any crimes.

The six police officers against whom we were asked to consider charges did not use more force than many others on the scene. In fact, some used significantly less. What set them apart was simply that they had been disciplined by the police department. Since one of the considerations in determining whether police acted reasonably is whether they acted in accordance with their training, a disciplinary action – suggesting that the officers had not complied with training guidelines – warranted further investigation.

As discussed in Section VI, some of those disciplinary actions were based on facts that were disputed by the officers or unsupported by the video. The jurors were asked to make our own independent factual determinations and then to decide whether the officers acted reasonably. (Actually, eight police officers – seven who used force and one

sergeant – were disciplined. The District Attorney’s Office determined on its own that Sergeant Schiavone, who did not use any force, and one of the disciplined officers, Demetrios Pittaoulis, would not be charged. This decision was made, we were told, in order to allow Officer Pittaoulis to testify without risking self-incrimination. But, again, based on our own fact-finding, the Grand Jury would not have recommended prosecuting either Schiavone or Pittaoulis.)

Below, we have summarized the evidence relating to the six officers against whom we were asked to consider criminal charges. We have included the officers’ own accounts of their actions, as well as comments from the use-of-force experts.

### **Officer Vincent Strain**

Officer Vincent Strain had been an officer in Philadelphia’s 35th Police District for nearly five years on May 5, 2008. He was patrolling with his partner, Officer Demetrios Pittaoulis, when they heard Sergeant Schiavone report gunshots in the vicinity of 4th and Roosevelt Boulevard. They then saw the string of patrol cars in pursuit of the Grand Marquis and joined the line.

In describing the pursuit, Officer Strain articulated well what we also heard from other officers. He testified about how the suspects’ car stopped several times along Roosevelt Boulevard. He said he saw the car’s doors open and the occupants put their feet and heads out as if they were going to run. At which point, he said, the officers stopped their cars and several got out, thinking that the suspects were fleeing.

Officer Strain explained that this is a trick used by experienced criminals:

It’s a tactic my partner and I have come across in our experience in the 35th District. When someone is fleeing

from the police, an experienced criminal or someone that basically has tried to get away from police before, they'll stop the car in that manner, open the door as if they're getting out of the vehicle. Most police officers see this, they obviously assume they're going to flee the vehicle. So they'll try to get a jump and jump out of the car and apprehend the suspect.

What they do, the reason they do this is they try to get the police officer between the suspect's vehicle and the police vehicle. Once they're in between, the suspects will close the door and take off.

At this point, the police officers are on foot half way between defendant's car and police car, they're at a disadvantage, at that point it gives the defendant a head start and then a lot easier way to get away at that point.

Officer Strain characterized the threat level at that point as "extremely high." Given that the radio transmissions were reporting that the car was wanted in connection with narcotics, gunshots, and possible firearms violations, he pointed out that "there's a strong possibility there's going to be a gun in the car."

It was with this knowledge that, after the suspects' car had been blocked, Officer Strain opened the rear passenger-side door and found Dyches in the middle of the back seat slumped over with his hands at his waist. Strain ordered Dyches out of the car, but the suspect did not budge. Officer Donnelly was on the other side of the car, also ordering Dyches out. When Donnelly reached in a couple of seconds later and pulled Dyches out, Strain ran around the car to help out.

Strain described what he did to assist Donnelly in taking Dyches into custody:

I kicked the male several times. When I first went around we were ordering him to lay flat on the ground with his arms out. At that point he was still flailing his arms, still reaching and basically he wasn't listening to our orders. . . .

We're trained to lay the defendant out flat, stomach down with arms out, this way there's no risk of him reaching for anything, we know what's in his hands. . . .

After the male was somewhat under control, he wasn't in custody yet, but several of the officers had a decent hand on him at that point. On the other side of the vehicle where they had pulled the one male, I believe the driver side or the passenger side front, they pulled him out, some of the officers were yelling: he's reaching, he's reaching. Basically saying they didn't have control and he's reaching towards his waistband area.

He then described what he did to help other officers secure Hopkins:

I went over and I assisted those officers. I basically went over and kicked that male several times, I don't remember how many times, basically to keep him on the ground at that point. He was trying to get up and still move around, he still had his hands loose.

Like I said, I kicked him several times in the arms or leg area, which we're taught to do at the Academy. We're basically taught to hit the lower and upper extremities, meaning arms and legs. . . .

Basically, I believe when I first went over he was still up in the air, still reaching. I believe I kicked him in the shoulder, upper arm area, then a couple of officers were basically down on the ground trying to grab his arm. [He was] trying to get up. That's when I went around and kicked him in the leg several times to keep him from getting up.

The video confirmed Officer Strain's account. It showed him interrupting his efforts to assist with Dyches and running around to provide kicks to Hopkins's arms, and then to his legs. It appeared from the video that his actions were purposeful and that he was responding to a call for assistance when he shifted his attention to the other passenger. If the officer had been merely kicking someone to take out frustration or hostility, there would be no need to shift to a different suspect – or to aim his kicks at arms and legs.

Officer Strain explained and made sense of the chaotic-looking scene for us:

Q. Were foot strikes your only option to assist the officers trying to arrest Dyches?

A. At the time, I believe so, yes.

Q. Why?

A. Based on our training when there's a suspect on the ground, we don't see his hands, don't have his hand, one of the most dangerous spots is getting close to that officer trying to grab the arms. It's something at least two officers have to do at a time. You don't want to have any more officers on the ground at a risk if he does reach for something, it's a lot easier if he had a gun, you can get shot a lot easier if more officers are down closer to the suspect. Basically the two officers that are attempting to get the arms do that and everybody else assists either kicking or trying to pin the person down.

The commentary on Strain's actions by Officer Charles Bell, the Police Academy trainer, illuminated what was going on and how the officers were applying their training to the situation:

Q. Officer Bell, could you give us any comments or opinions regarding Officer Strain's use of force?

A. . . . If you have a suspect who you want to keep them – you might use a leg strike so they can't potentially turn over.

The other thing I want you to notice, as he goes around and assists, there is a point where he gets ready to – it looked like he's about to go into another foot strike, but because the other officers are already securing, he didn't find the need to.

Once the resistance has stopped, the level of force is to drop down, so he went to assist in one group and went around to the other, and upon realizing after doing a strike or two that the defendant was secured, he stopped having the need to strike and just assisted with securing. . . .

Q. Are you telling us that Officer Strain's use of force was consistent with your training?

A. Yes, consistent with training, consistent with the levels. All the officers that we observed up to this time have all stayed in that same use of force. No one has gone above or beyond, but they have all stayed consistent. . . .

[E]ven though there's three different suspects, if one of them has a gun, all 15 of those officers right now, one of their lives are at stake at that point because then at this point everybody is in arm's reach.

That is why I truly believe that everyone was using the foot strikes, because nobody wanted to reach in until these guys got their hands cuffed.

Mr. Ronald Traenkle, the use-of-force expert, addressed one of the questions we had about several of the officers – whether it was inappropriate to move from one suspect to another:

Officer Donnelly, who has a greater reach, reaches in and starts to pull Mr. Dyches out.

Strain then comes around to the passenger's side of the vehicle – the driver's side of the vehicle, and he delivers, again, strikes to green areas with the foot because Dyches is not compliant. He's on his back. He's resistant.

As soon as they flip him, he interprets that there's some measure of control there. He now goes over to the other side of the vehicle, assists in Hopkins. Again, the blows are delivered to the green muscle mass areas, kicks or strikes. The strikes are delivered to the green muscle mass.

He comes back around to the other side once they get the handcuffs on Hopkins, and he basically kneels on the upper shoulder area of Dyches to keep him pinned to the ground while they are cuffing him.

I see nothing in his actions that is inconsistent with the generally accepted standards or his training. I feel it's appropriate.

Based on the experts' opinions and our own observations, we see no basis to charge Officer Strain with any crimes.

### **Officer Patrick Whalen**

Officer Patrick Whalen was only a month out of the Police Academy, assigned to the 35<sup>th</sup> District, when he and his partner, Officer John Gallagher, responded to Sergeant Schiavone's radio report of the gunshots and pursuit on May 5, 2008. Before enrolling in the Police Academy, Whalen had spent four and a half years in the U.S. Marine Corps. He had served in Afghanistan, where he received a Navy Achievement Medal for valor, and in Iraq, where he received a Purple Heart.

The week before May 5, Officer Whalen had been involved in an arrest eerily similar to the one in this case – except that it was for a stolen vehicle, not a triple shooting. As in this case, the suspect had attempted to flee, but on foot. Whalen had assisted another officer in grabbing the suspect and bringing him to the ground. The suspect had struggled against the officers as they tried to handcuff him. As he tried to crawl under the vehicle, the suspect seemed to be reaching one of his arms toward his waistband. And when the officers pulled the suspect from under the car and finally gained control of his hands, sure enough – he had a gun in one hand. He had pulled it from his waistband while prone on the ground.

Officer Whalen's account of the arrest of Hall, Dyches, and Hopkins reflected that he was still a rookie. He was picking up cues for what to do from more experienced officers. His recent Police Academy training was fresh in his mind. And his analysis of

the situation revealed to us that he was trying hard to apply what he had learned. He explained his actions as follows:

When the vehicle stopped again at 2nd and Erie, as I approached the vehicle I had my weapon drawn. My gun, because at this point in my mind these guys were just involved in a shooting as it came over police radio. So for my own protection I draw my weapon assuming they have weapons in the vehicle. As I approach the vehicle, I believe there were three officers with their hands on the driver bringing him to the ground and four officers struggling with the passenger in the rear seat behind the driver.

At this point, I realized the threat of the suspects' having a weapon readily available probably isn't there, since there are officers within arm's length of them with their guns away, so I replace my weapon back in its holster and proceeded to move towards the driver who was struggling with three officers on the ground refusing to give them his hands. As I'm moving forward, I'm running towards the driver on the ground, I hear every officer shouting, Give me your hands, give me your hands, stop resisting, stop resisting.

At that point, given the force continuum, I realized officer presence, which is the first step, obviously isn't in effect. Just being in pursuit shows our presence isn't going to make them comply. Next would be verbal commands. As I move up, I hear every officer shouting, Give me your hands, but there's still a struggle. So, next would be on the force continuum would be control holds and strikes, which I see officers already beginning to use foot strikes to gain control of the suspects' hands which were underneath their stomachs as they were laying face-down on the ground refusing to be handcuffed.

I move up and I immediately deliver foot strikes on suspect Hall, who is the driver, to his upper arm area near the shoulders, which is the preferred area, the least chance of injury, but still causes pain and usually makes the suspect comply and be handcuffed.

Striked suspect Hall approximately five to six times. At that time the officers kneeling down who were trying to pull his hands from underneath him get his hands, I can see both of them and I realize there is no weapon in them. At that time, I

felt I was only going to get in the way. There was about four or five officers on him at that time, maybe four. I was only going to be in the way at that point, as I could see his hands, they're the delivery system of a weapon. I felt the threat level really dropped for me personally since I don't have my hands on the suspect. There's still a bit of struggle with him as he wasn't putting his hands behind his back, but they had control of his hands.

When determining the use of force, you have to determine the control, the control we have over the suspect and the suspect's actions. The suspect Hall appeared to be under control to an extent where they had his hands under control and his arms, and he was still refusing to be handcuffed though. At that time I hear some officers behind me shouting abnormally loud, it sounds like a struggle behind me. I turn around and see suspect Dyches on the ground with three officers on him attempting to get his hands behind his back; he's laying face down as well.

I move over and attempt to assist these officers and handcuff suspect Dyches by delivering foot strikes to his upper shoulder area, approximately three times, four times in the upper shoulder area. At that time they were able to again gain control of his hands, pull them out from underneath him. The reason it's so important to get the hand out from underneath him is the main area suspects carry their weapons where we find them is the waistband area. So it's an extreme threat to us as police officers coming up to a suspect on the ground with his hands underneath him.

I took the most immediate action and delivered foot strikes to suspect Dyches, which was effective because his hands came out from under him and I could see them, as I could with suspect Hall. I seen there was no weapon, I immediately stopped using my force. He still was struggling, refusing to put his hands behind his back but there was . . . a police officer on each arm of the suspect fighting to get his hands to the center of his back to be handcuffed. At that time, I stepped back, assessed the area, went back over to suspect Hall to see the progress, make sure he was handcuffed. As I moved back again, he's still struggling a bit, but he's under control, there's no weapon in his hand, no need for me to use force.

Again, I turn around I see Dyches begin struggling excessively and it appears the officers are about to lose control of his hands, he's pulling them, wrenching them, trying to get them under him again, which to me is an indication he may be reaching for a weapon to try to escape. I again move around the other side of him of the suspect and deliver foot strikes to his forearm area because he had his hands semi in the center of his back, but he was pulling them away from the officers, so I deliver foot strikes to his forearms, again immediate area of his body that shouldn't cause injury but enough pain compliance to be handcuffed.

At that time, his resistance was lowered and they appeared to get his hand in the center of his back. I immediately stopped using force, assessed the area, and from that point on I basically – again, I was only a month out of the Academy, I wasn't too sure of the protocol after using force like that, and the severity of the situation, so I stand by and wait for directions from my sergeant.

Officer Bell testified that, in his opinion, Officer Whalen's foot strikes were properly directed toward getting the suspects to bring their hands out and to stop resisting arrest. He explained that it is natural and appropriate for officers to assume that someone who has been involved in a shooting and refuses to show their hands may still be hiding a weapon. As long as the suspects were refusing to bring their arms out, Officer Bell found no fault with Whalen's forceful kicks. Similarly, Mr. Traenkle cited the suspects' continued resistance in concluding that Officer Whalen's use of kicks to large muscle mass areas was appropriate and consistent with his training.

We see no basis to recommend criminal charges against Officer Whalen.

### **Officer Patrick Gallagher**

Officer Patrick Gallagher had been a patrol officer in the 35th District for a year and a half on May 5, 2008. He was partnered with Officer Donnelly on that day, and

arrived at the scene shortly after the first patrol cars. He first appeared on the video when he ran up behind the Grand Marquis and kicked the trunk (he explained that he thought the car might be rolling backward).

Because Officer Gallagher was one of the later arrivals at the scene, he took on the role of a floater, going where he was needed most to assist the officers down on the ground who were trying to control the suspects' arms and get the hands into cuffs. He first went to assist the officers who were struggling with Hall. Officer Gallagher kicked and punched at Hall's arms. He admitted to us that while he was aiming at Hall's arms, he may at one point have missed and struck Hall on the head instead. He said that he hit Hall with a closed fist in which he was holding his gloves because he hadn't taken the time to put them on. Gallagher claimed that "immediately after striking [Hall] with my left hand, both of his hands came free, and he was taken into custody."

The video shows that Officer Gallagher was correct in asserting that his kicks and punches were effective and helpful. Along with the strikes by other officers, they did help free Hall's arms momentarily. But Gallagher was mistaken that Hall was immediately brought under control and into custody. Gallagher stepped back, as he was trained to, once his kicks had freed Hall's arms and the officers could see the suspect's hands.

Assuming that his job was done, Gallagher then moved to assist on the other side of the Grand Marquis, where officers were calling out that the suspect was twisting his legs to try to roll over. Gallagher apparently did not know, even when he testified, that Hall had wrenched his arms away from the officers again after Gallagher had left that side of the car. Officers Schaffling, Bascom, and Pittaoulis wrestled with Hall for a while longer before he was finally handcuffed.

Officer Gallagher responded to Officer Lisa Heil Pittaoulis's call that Hopkins, the passenger (and suspected shooter), was trying to turn himself over. Gallagher testified that he used kicks to spread Hopkins's legs wider so that he could not flip himself over and face the officers, perhaps with a gun. When Officer Vincent Strain joined Gallagher and also began striking Hopkins's legs to prevent him from getting up, Gallagher stepped back to attend to some blood that he had on his hand. He explained that he thought the blood might have come from someone else, and he wanted to quickly remove any pathogens.

Officer Gallagher's actions appeared to be purposeful and directed toward assisting the officers on the ground to control the suspects. His kicks were designed to free up the suspects' arms and to keep the suspects prone on the ground. There was no evidence of hostility or intent to injure. In fact, after Dyches was placed in the patrol car, he asked Officer Gallagher about a ring that the suspect had lost as he was pulled from the car. He told Gallagher that it had belonged to his cousin, Andrew Coach, who had been shot and killed the night before. Officer Gallagher then retrieved the ring and gave it to Dyches. And when Dyches complained that he was hot and uncomfortable in the patrol car, Officers Gallagher and Donnelly put the windows down.

These are not the acts of officers who were beating suspects out of ill will. The very fact that Dyches thought the officers might retrieve his ring for him, or care about its sentimental value, indicates that Dyches did not think so either.

Officer Bell commented on how Officer Gallagher used his foot strikes to assist other officers in overcoming the suspects' resistance. He saw no problem in Gallagher moving from one suspect to another since he moved to a suspect who was also offering

resistance. Mr. Traenkle testified that Officer Gallagher's use of force was appropriate and consistent with his training.

We see no reason to recommend criminal charges against Officer Gallagher.

### **Officer Robert Donnelly**

Officer Robert Donnelly had been on the street as a Philadelphia police officer for only nine months when he assisted in the apprehension of Hall, Dyches, and Hopkins on May 5, 2008. He was assigned to the 35<sup>th</sup> District and was partnered with Officer Patrick Gallagher on that day. He testified that he heard Sergeant Schiavone's priority radio call reporting gunshots and joined the pursuit of the suspects around 4<sup>th</sup> or 5<sup>th</sup> Street and Roosevelt Boulevard.

Officer Donnelly testified that he assumed the occupants of the Grand Marquis were armed based on what he heard over the radio. As soon as he arrived on the scene, he approached the rear driver-side door with his gun drawn. Another officer had already opened the door and Donnelly could see Dyches inside. With his gun drawn, Donnelly ordered Dyches to get out of the car and to show his hands. When Dyches did not comply, Donnelly reached in to pull the suspect from the car. Donnelly testified that Dyches struggled with the officer briefly in the car, but Donnelly succeeded in getting Dyches out.

Officer John Gallagher ran to help Donnelly and the two of them struggled to control Dyches. Donnelly and Gallagher used considerable force. On the videotape, they probably look to be among the more forceful of the officers. But they had to be. Their punches and kicks were all directed at gaining control of the suspects' hands so that they

could handcuff him. Dyches was fighting their efforts and ignoring all of their verbal commands. There was nothing unnecessary about their actions in getting Dyches handcuffed. In fact, they needed the help of several other officers to finally get the suspect under control.

It was after Dyches was handcuffed that Officer Donnelly did two somewhat questionable things. The experts in the use of force questioned one and we, the Grand Jurors, questioned another. The action that the use-of-force experts questioned was Donnelly's decision to put his foot on Dyches's head as a means of holding the suspect after the handcuffs were in place. Police trainer Bell suggested that Donnelly probably did it out of fatigue, but still said that it was not a technique that is taught at the Police Academy, and it did not reflect the best judgment.

Mr. Traenkle agreed. He testified that the foothold on the head did not violate any specific guideline, but that it was a risky technique. He pointed out that it could cause the suspect injury if the officer pressed down (which Donnelly did not) or lost his balance and put weight on the suspect's head. Like Officer Bell, however, Mr. Traenkle saw no evidence of an intent to harm Dyches with this hold, and in fact, there was no harm.

Officer Donnelly's explanation of his action seems to confirm the lack of intent to harm Dyches:

At this point, I stood up and I put my foot on his head just to stop him from moving. I used minimal force. I didn't kick him, nothing like that. Just wanted to have the situation under control.

Neither the experts nor the jurors approved of this procedure, but with no intent to harm, and no harm, it did not constitute a crime.

Some of the jurors were troubled also by Officer Donnelly's handling of Dyches when the officer was trying to put the suspect into the patrol car. On the video, it appeared that Donnelly bumped Dyches up against the patrol car twice when he was putting the suspect in. Donnelly explained what happened:

I walk him back to the car. As I'm telling him – I look at him, telling him, "Okay, we're going to get in the car." His body stiffens up, his legs tighten up, his whole body stiffens up. So I push him against the car and sit him down into the car.

We asked Mr. Traenkle about this use of slight force by Donnelly and whether it was warranted. He explained that officers have to get suspects into the patrol cars, and if a suspect won't go voluntarily, some sort of force needs to be used. He considered the taps used by Donnelly to be perfectly appropriate. Mr. Traenkle even admitted: "It was a lesser level of force to get him in the car than, quite frankly, I would have used."

Most of us believed Officer Donnelly's testimony that Dyches resisted getting in the car (particularly since Dyches acknowledged that he did not bend his knees). But even if Dyches did not resist in any significant way, we would not recommend criminal charges based on this minimal use of force.

### **Officer Sean Bascom**

Officer Sean Bascom was a 12-year veteran of the Philadelphia Police Department on May 5, 2008. He was assigned to the Narcotics Strike Force and partnered with Officer Thomas Schaffling. Bascom was the driver of the car that finally brought the Grand Marquis to a stop at 2<sup>nd</sup> Street near Erie Avenue. At the time Bascom pulled his patrol car in front of the Grand Marquis to block its path, he had heard on the police radio

that the occupants of the vehicle were involved in a shooting and had refused to stop despite an extensive police pursuit.

Officer Bascom explained that he and his partner were unable to execute a so-called felony stop because they were in front of the suspects' car – directly in the line of fire. As soon as they stopped, Officer Schaffling, who has received numerous prestigious awards for bravery, rushed toward the driver's door with his gun drawn. Schaffling testified that he opened the driver's door and ordered Hall to put his hands up. Hall failed to comply, leaving his hands in his lap instead. At that point Schaffling, after holstering his gun, reached in and pulled Hall from the car. Bascom was backing up Schaffling with his gun drawn.

As Hall came out of the car, Bascom holstered his gun so that he could help Schaffling control Hall. Hall went immediately onto his stomach with his arms under his 6'3", 385-pound body. Schaffling and Bascom both ordered Hall to put his arms behind his back. When it was apparent that he was not going to comply or submit to being handcuffed without a fight, officers Demetrios Pittaoulis, Patrick Gallagher, and Patrick Whalen joined Bascom and Schaffling to assist. (Gallagher and Whalen stayed only briefly.) Officers Schaffling and Pittaoulis, who at 5'9" and 5'7" respectively weighed only 300 pounds between them, were on the ground with Hall, trying to gain control of his arms so his hands could be cuffed.

Officer Schaffling, who was working on the left arm, described having both of his hands around Hall's arms and being unable to pull his arm out from underneath him. One-hundred-forty-pound Pittaoulis, also highly decorated for valor, meanwhile was tugging on Hall's right arm. Like Schaffling, he testified about the difficulty of

handcuffing a suspect who refuses to comply with verbal commands. He described trying to handcuff a resistant suspect as “the hardest task in your life.” Even when suspects are not kicking and flailing, they can still make it very difficult for an officer just by using their strength to withhold their arms. Pittaoulis testified that officers are trained that they may use force on a suspect who is actively resisting efforts to handcuff him.

Accordingly, while Schaffling and Pittaoulis pulled at Hall’s arms, Bascom aimed foot strikes at the arm that Hall had clenched over his head. After Bascom kicked Hall’s arm approximately eight times, it came loose from his head. Bascom immediately stopped kicking, grabbed the loose arm, pulled it behind Hall’s back and gave it to Pittaoulis to handcuff.

Bascom then moved to the other side of Pittaoulis so that he could help put the handcuffs on. All the while, Hall was using his strength to prevent the officers from cuffing him. Bascom gave two more kicks to Hall’s right arm, and the officers were finally able to get the handcuffs on. Bascom used no force once Hall was in handcuffs. Bascom testified that all of his kicks were aimed at Hall’s arms and, to his knowledge, that is where they all hit.

Officer Schaffling testified that he thought all of the officers who assisted in handcuffing Hall – including his partner, Bascom – had acted appropriately: “Again, [Hall] was fighting with us the whole time until we had him handcuffed and he stopped struggling, at which point [he] wasn’t struck at all.”

The use-of-force experts agreed. Officer Charles Bell testified that Bascom’s actions were consistent with officer training. Hall was, according to the testimony of all the officers involved, ignoring verbal commands and resisting being handcuffed. By

directing his strikes at Hall's arms to disable them, and by discontinuing the force once Hall was in handcuffs, Bascom followed training guidelines, according to Bell. Ronald Traenkle concurred, explaining as he watched the video:

Mr. Hall is very large. He's prone down on the ground. They lose sight of the hand. The kicks again are delivered to the upper arm area at it looks like maybe the elbow or forearm area. That's muscle mass area. They get the one hand out from underneath, and they start to bring it back.

This hand is still not compliant. He is not bringing it back. Blows are delivered to the upper arm area and it looks like maybe the elbow or forearm area. It's a little hard to tell with the glare off of the shirt.

Again, there's no kicks to what would be considered the yellow area which is a breaking technique or red area which can be construed as deadly force.

It's the lowest level of impact. They are strikes. As I testified, kicks are strikes. They are taught at the Academy initially to be delivered where practical and possible to large muscle mass areas, the green areas.

I find his actions also consistent with the general accepted standards and his training.

Accepting that Officer Bascom's actions were consistent with his training and the generally accepted standards for police officers, we find that they cannot be the basis for any criminal charges.

### **Officer Jonathan Czapor**

Officer Jonathan Czapor was assigned to the 25th District on May 5, 2008. At that time he had been a police officer for nearly seven years. He and his partner, Ricardo Rosa, arrived late on the scene. All of the suspects were already out of the Grand Marquis and on the ground. Czapor approached from in front of the suspect's vehicle on 2<sup>nd</sup>

Street. He testified that he walked past Hall because he believed that he was already handcuffed. (In fact, Hall was not yet handcuffed, but he appeared to be pretty well under control at that moment.)

Czapor said that as he walked behind Dyches, he heard other officers commanding the suspect to stop resisting and to put his arm behind his back. Czapor then went over to Dyches's side, shone his flashlight down on the suspect and gave two kicks at Dyches's shoulder. Dyches was handcuffed a split second after Czapor's second kick. It appears from the video that Czapor's kicks could have helped at the very end of the struggle to handcuff Dyches by breaking any last resistance in the suspect's right arm. In any case, it certainly seems that the kicks were intended to aid the apprehension and not to cause injury. At worst, they were well intended, but ineffectual. No one would mistake them for police brutality.

Experts Bell and Traenkle testified that they believed Czapor's use of minimal force was appropriate. Although the other officers were getting Dyches fairly well under control, the suspect was still resisting the final step of allowing himself to be handcuffed. Mr. Traenkle concluded that Czapor's two "very light kicks" were not unreasonable or inconsistent with his training or professional standards. Accordingly, we do not recommend criminal charges against Officer Czapor.

**The Grand Jury, at the end of the investigation, has come to a different conclusion regarding Sergeant Schiavone's assessment of the arrests.**

It is appropriate to end our factual findings with Sergeant Joseph Schiavone. It was his testimony at the beginning of the investigation that initially shocked us – his insistence that these had been successful arrests, even a "great job." The 35<sup>th</sup> District

supervisor was instrumental to the arrests from the time he radioed the report of gunshots until the suspects were apprehended and transported to Temple University Hospital. He and his unit's patrol cars were the first to join undercover officer Delaurentiis in pursuing the Grand Marquis. And officers under his command were key to the apprehension of Hall, Dyches, and Hopkins. Even after the arrest was condemned in the media, and officers were disciplined, Sergeant Schiavone proudly accepted responsibility for the arrest.

Sergeant Schiavone was not involved in the actual, physical restraint of the suspects. He himself used no force at all. His role was initially to alert units to the gunshots and to update radio reports as he and his officers pursued the suspects. He described how he and the other officers in pursuit of the Grand Marquis attempted a "felony stop" of the getaway car, but the suspects refused to comply and took off after pretending to stop. Once officers from the Narcotics Strike Force (who were not under Sergeant Schiavone's supervision) blocked the getaway car from the front and approached it, Sergeant Schiavone and his men backed them up. From then on, the sergeant monitored the apprehension and notified police radio what was going on.

Sergeant Schiavone described how the arrest unfolded once the car was stopped and explained that his goal was to apprehend the suspects "as quickly and safely as possible." He reiterated what every other officer told us – that, given the shooting just minutes before, the police had to assume that the suspects had at least one gun on them. He saw as the arrest progressed that the suspects were not complying with verbal commands to show their hands. Instead, they were resisting, refusing to give up their hands, and hiding them under their bodies. He echoed what is drummed into every officer

in training – that uncontrolled hands, especially when under a body with access to the waistband, can kill police and others as well.

Focusing on the apprehension of Hall, Sergeant Schiavone explained the time and space constraints that applied to all the suspects. He emphasized how quickly everything was happening, and how there was not enough time or space around the suspect for all of the officers to “get down slowly, take their time and try to get his arms.”

Sergeant Schiavone’s goal was to “stay in control” and “to do it fast so nobody gets hurt.” He pointed out what could not be appreciated from a casual viewing of the video: It was the suspects’ actions that “dictate[d] everything that you see in that tape. Their actions dictated the necessary force that we used to apprehend them safely and quickly.”

The use-of-force experts agreed with Sergeant Schiavone’s assessment. Officer Bell, in fact, was impressed with the level of control the officers displayed in light of the number of suspects, the number of officers, and the level of danger:

The one thing I will say, even still with all [the officers moving from suspect to suspect] – it looked like chaos, but it was very controlled, very controlled. This got holstered. Once one person holstered, everybody holstered. Once one person stopped resisting, everybody stopped kicking.

There was nobody – there was no prisoner getting beat, punched, kicked, anything, hit after they were handcuffed. Nobody had to blow a whistle and say ceasefire or anything like that.

The Grand Jury, as we have noted, was initially taken aback by Sergeant Schiavone’s description of the arrests as “a great job.” But after our year-long investigation, we have developed a fuller understanding of what happened, and a better appreciation for the sergeant’s perspective. He testified to the Grand Jury:

We heard gunshots, we responded. And we caught three guys that just shot three people basically without incident. We used the amount of force that we needed to use, and nobody got hurt, the necessary amount of force. And you know, the defendants didn't get hurt, and more importantly we didn't get hurt. We all went home that night. And it's very important. And it's a great job, it really is. They're the kind of jobs that, you know, you want us to do, that you hear about all the time. People always tell us, get the people that are shooting people; well, we did. They did a great job.

A year after the Grand Jury began this investigation, we see the videotape in a new light. We now know how police are trained and we understand that they are supposed to use as much force as necessary to apprehend suspects as quickly and safely as possible. We now know what transpired before the May 5, 2008, arrest of Hall, Dyches, and Hopkins, and that the officers were acting – as they should have – on the assumption that the men were armed and dangerous.

We now know that it was the suspects' resistance that dictated the level of force that the officers applied, reasonably and in accordance with their training. We now know that the officers' actions throughout the pursuit and the arrest were controlled and restrained – a fact confirmed by the officers' behavior after the suspects were handcuffed, and in marked contrast with our initial impression on viewing the video. And we now understand what Sergeant Schiavone was talking about when he defended the arrests.

## Section VI

### What We Did Not Consider

This investigation was unusual in that the Grand Jurors knew some of the history, as well as the aftermath, of the May 5 arrest because of the media attention surrounding the videotape. We were not a sequestered jury, and we were aware of the media coverage and some aspects of the incident. In our decision-making, however, we did not consider any evidence that was not introduced before the Grand Jury. In particular, our factual findings and conclusions were not influenced by the police department's disciplinary action against the officers involved in the arrests, or by a jury's verdict of not guilty in the three suspects' trial for attempted murder.

#### **The police department's disciplinary action did not influence our conclusions.**

Before we began this investigation, most of the jurors were aware that some of the police officers involved in the videotaped arrest of suspects Hall, Dyches, and Hopkins had been disciplined or fired. When we first called some of the disciplined officers as witnesses, we asked them about the disciplinary actions and we reviewed related reports produced by the police department. We ultimately found this line of inquiry to be unhelpful and distracting.

We proceeded to conduct our investigation without reference to the factual findings or conclusions that formed the basis for the department's disciplinary action. We did so because we believe we were in a position to conduct a more thorough investigation than was possible in the few days immediately after the incident. Moreover, it became

apparent that Police Commissioner Ramsey used a different standard for his administrative action than we applied to determine whether the police officers committed any crimes. According to testimony from police department witnesses, the Commissioner had the authority to take whatever action he believed was in the best interest of the police department and the City of Philadelphia. Our charge was much narrower.

Commissioner Ramsey employed a seldom-used disciplinary procedure called “Direct Action” to expeditiously discipline four of the officers involved in the arrests and to fire four others. The Commissioner’s action was taken before the police department’s Internal Affairs Division (IAD) had completed its investigation. Out of consideration for any possible criminal investigation, as well as for the rights of the officers, the investigators did not interview any of the officers at the center of the incident. And the suspects refused to be interviewed. So the Commissioner, who reviewed the DVD version of the video, had access to only a small fraction of the evidence that we were able to amass and consider.

Rather than wait for a year or more (the usual length of time for a thorough investigation), the Commissioner had IAD investigators gather as much information as they could in the days immediately following May 5. On May 19, 2008, Commissioner Ramsey announced that Officers Robert Donnelly, Patrick Gallagher, Vincent Strain, and Patrick Whalen would be dismissed. Suspended were Officers Sean Bascom (5 days and transferred), Demetrios Pittaoulis (10 days and transferred), and Jonathan Czapor (15 days). Sergeant Schiavone was demoted.

We questioned two officers about the police department’s disciplinary action against them on the assumption that, if they had violated department procedures, that

might suggest an improper use of force. What we found was that we did not agree with the underlying factual bases for the disciplinary actions.

Demetrios Pittaoulis, for example, was one of the first disciplined officers to testify before us. We were told even before he testified that the District Attorney's Office had independently determined that the evidence did not support any criminal charges against him – a decision with which we concur. Officer Pittaoulis was asked about the "Statement of Charges" that set forth the supposed actions for which he was disciplined (he received a 10-day suspension, a reprimand, and a transfer). In this form, referred to by the police as an "18," it was alleged that Pittaoulis had struck Brian Hall in the head with an "unidentified object." The 18 also alleged that the officer had neglected to fill out a "Use of Force Report" as required whenever force is used against a suspect.

Yet Officer Pittaoulis testified under oath that he did not strike Hall with any object – a claim that the video seems to confirm. Nor was it true that Pittaoulis had neglected to submit a Use of Force Report. We viewed a report submitted by Pittaoulis on May 6, 2008. It was signed by his sergeant and his lieutenant on May 7, and by his captain on May 12.

Similarly in the case of Officer Jonathan Czapor, we do not agree with the factual allegations contained in the 18 in support of the disciplinary action against him. Czapor used barely any force at all. He lightly tapped Dyches's right arm with his foot at the very end of the struggle to get Dyches handcuffed. The 18 alleged that Dyches was handcuffed before Czapor arrived and that Czapor was therefore kicking a handcuffed man. But that is not what we observed in the video. It was clear that Dyches was still resisting being handcuffed when Czapor came alongside of him. Czapor testified that Dyches's arm was

not yet secured when he kicked at it, and that is consistent with what we saw on the video.

Because we were getting distracted from the main purpose of our inquiry and were spending too much time questioning the police department's disciplinary actions, it was determined that the Grand Jury would not hear evidence about the disciplinary process until we had made our decisions concerning criminal charges against the officers.

### **We questioned the police department's disciplinary process**

We did not end our inquiry with our decision regarding criminal charges because we were concerned about the disciplinary process used in this case. We were troubled that final disciplinary actions were taken without hearing from the officers themselves. We believe that the testimony we heard from the officers involved in the arrest was important to our decision and helped result in factual findings that were sometimes inconsistent with what was in the 18's of the disciplined officers.

We believe that officers were disciplined and lost their jobs based on findings that could have been corrected or explained by talking to the officers. The finding that Officer Demetrios Pittaoulis had not submitted a Use of Force Report could have been quickly disproved. "Unidentified objects" with which officers allegedly hit the suspects could have been identified (Officer Patrick Gallagher explained that the object he used was his pair of gloves; Pittaoulis denied using any object). Officer Bascom could have explained that he kicked in the "head area" because that is where the suspect's arm was clenched (the video shows Bascom kicking Brian Hall's shoulder and upper arm).

Officers Strain, Gallagher, and Whalen could have explained why they moved from one suspect to another. They could have refuted, as they did before the Grand Jury, the accusation that their strikes “served no legitimate purpose.” Their fellow officers who were struggling on the ground to get control of the suspects’ hands could have been asked whether Whalen’s, Gallagher’s and Strain’s actions had assisted the arrests or not.

Without talking to the officers, Commissioner Ramsey could not have known what was in the officers’ minds as they approached the suspects in the Grand Marquis. The video did not capture what they knew about the suspects. It did not capture the gunshots that many of the officers heard just before they joined the pursuit. Nor did it show the strange stop-and-go pursuit with doors opening and closing that served to heighten the officers’ preparation for danger.

By the time we concluded our investigation of the officers’ actions, we had formed the impression that the police department had acted arbitrarily and incorrectly in disciplining and firing officers. Officers who used very little force were disciplined, while some who used greater force were not. Some (who used foot strikes) were punished for moving from suspect to suspect, while one (who used an asp) was not. Some of the alleged facts supporting the discipline just seemed wrong. The department’s conclusions, we learned, were at odds with the opinion of Sergeant Charles Ebner, a Philadelphia Police Department tactics instructor whom the IAD investigators consulted. After viewing the video, Sergeant Ebner had expressed his view that the officers had all acted consistently with their training.

But then we listened to the other side. After voting not to recommend charges against the officers, we requested to hear from the IAD investigators (Lieutenants Brad

Christy and Daniel Bartlett) and their supervisors (Chief Inspector Anthony DiLacqua, Captain Carol O'Neill, and Captain Shawn Trush) who had participated in the disciplinary action.

What we learned from these witnesses was that IAD does not consider its investigation complete – that its investigators have not reached their final conclusions about the officers' use of force. We learned that they do, in fact, intend to interview the officers before they render their determination. The witnesses explained why IAD does not interview officers accused of using excessive force until after a decision has been made concerning potential criminal charges. They wait so as not to jeopardize either the officers' rights or a prosecution, should charges be brought. We learned that the IAD investigators had not interviewed the three suspects who were arrested because they refused to talk. (The Grand Jury, on the other hand, could subpoena the suspects.) We also learned that the police needed a waiver from the suspects to obtain their medical records. (Again, we could use a subpoena.)

After hearing from the IAD witnesses, we understood better why they had not yet interviewed the officers in this case. We were reassured that they intended to complete a full investigation, as they always do, and would forward their conclusions to the Commissioner. They told us that it was possible that their conclusions after a full investigation could be inconsistent with the findings that supported the department's initial disciplinary actions. Everyone agreed that it is preferable, whenever possible, to hear from all sides before rendering disciplinary decisions.

And yet the IAD witnesses supported Commissioner Ramsey's actions in disciplining the officers before IAD had completed its normal type of investigation. In

order to try to understand why, we asked to hear from (but did not subpoena) the Commissioner himself. We are grateful that he agreed to testify before us.

Commissioner Ramsey explained to us the circumstances under which he believes it is appropriate to exercise his authority to impose “Direct Action.” He said that he employs it when an offense is so serious, or its impact on the public’s confidence in the police department is so great, that quick action is called for. Even then, he emphasized, he only resorts to Direct Action when he believes that he has enough information to support his decision.

The Commissioner testified that his 40 years of law enforcement experience have given him a sense of the type of issue that can affect the public’s confidence in its police department. He felt strongly that the incident captured on the video was one of those issues. And he knew that an investigation of this large an incident, involving so many officers, could take a year or more if conducted in the usual fashion.

The unexplained video, which was being broadcast worldwide without any context, appeared to show an excessive use of force. (It appeared that way to us initially.) The Commissioner, who had been in his position only five months, believed that it was important to take direct action in order to retain the public’s confidence in the department. He felt that his actions were necessary to instill discipline and to allow him to guide the department. He told us that it is the Commissioner’s job to set policy. He was setting a policy, we understand, that the Philadelphia Police Department would not tolerate the type of indiscriminate and gratuitous violence that the video – viewed as the public saw it, without context – seemed to display.

Upon seeing the video on television, Commissioner Ramsey immediately instructed IAD to conduct as thorough and quick an investigation as possible. He told the Grand Jury that at the time of the incident he was focused on the shooting death, just two days earlier, of Sergeant Stephen Liczbinski. As soon as Sergeant Liczbinski's funeral ended, however, the Commissioner turned his attention to the investigation of the May 5 incident. He and his deputy commissioners, along with IAD investigators, spent hours and hours reviewing the video in order to identify the officers involved and to isolate their respective actions.

Commissioner Ramsey testified that he consulted with his deputies to be sure that he understood the policies of the Philadelphia Police Department. (Although the Commissioner had decades of experience in law enforcement, he was new to Philadelphia and acknowledged that he wanted to be sure that he understood Philadelphia's policies regarding use of force.) After listening to his deputies' advice, he felt that the video provided him with sufficient information to determine that certain officers' actions were not in compliance with the department's policies and procedures. He said he first determined which officers' actions violated departmental policies, and then determined how severe the violations were in order to decide what discipline was appropriate.

Commissioner Ramsey took full responsibility for the disciplinary decisions, although he relied on IAD's investigation up to that point. He said that he reviewed, but did not prepare the formal paperwork, for the 18's. He testified that he believed the information in the 18's was accurate and reflected what he had observed on the video.

Although we reached different factual findings from those that supported the Commissioner's direct action (as reflected in the 18's), the Commissioner's testimony made understandable what initially struck us as indiscriminate action. Before the Commissioner testified, we would have characterized his actions as "media driven" – and not in a good way. But when Commissioner Ramsey readily admitted that the media attention had played a part in his decision – when he explained that he took his actions in part out of concern for the department's image and the need for the police to have the public's confidence – we saw his actions somewhat differently. What we might have described as a rush to judgment, he defended as a necessary action early on to set standards for officers' behavior. We were persuaded of the Commissioner's belief that the actions he took were for the good of the department and the good of the city.

We agree, moreover, with the standard that Commissioner Ramsey implied with his actions. His decision to discipline some officers who used force but not others made it clear that he was not condemning the necessary use of force by police officers attempting to apprehend violent criminals. With his decision he sent a message that unwarranted, gratuitous force is not acceptable. And, taken out of context, that is what the video appeared to display. Had the Commissioner taken no action, the public might have gotten the wrong message – that the new Commissioner would tolerate that kind of force from his officers.

Unfortunately, a quick response required acting before hearing from the officers. Commissioner Ramsey was at a disadvantage. He was unaware of what was in the officers' minds (a crucial element in determining reasonableness of actions). He did not hear their testimony that they believed they were facing armed suspects who had just

been involved in a shooting. Without input from the officers, mistakes in the 18's went unchallenged and allegedly indiscriminate behavior by the police was left unexplained.

Once we heard from Commissioner Ramsey, we understood why he took the action he did. Although we still believe that investigations that consider all possible evidence, including interviews with all participants, will lead to more informed determinations, we understand why the Commissioner believed it was important to act quickly in this unusual case. And we were impressed that he told us his mind is open to change if he learns more information once the Grand Jury's and the IAD investigations are completed.

Finally, he made it clear that he does not take lightly the disciplinary actions that he took. He and his top advisers spent many hours trying to determine what happened on May 5, 2008, at 2<sup>nd</sup> and Pike Streets. The Commissioner took the DVD home and watched it over and over. In the end, however, it was only a video. And it did not tell the whole story.

Our Grand Jury investigation would not have been complete without the Commissioner's testimony. We appreciate his honesty and his willingness to explain his actions. And we are grateful that he volunteered an opinion that confirmed our own conclusion that the officers in this case committed no crimes. Commission Ramsey offered the following heartfelt statement at the conclusion of his testimony:

Let me just say that I fully appreciate not only how difficult it is on all of you to go through this process, but even more importantly, I appreciate how difficult it is to be a police officer. I have been in law enforcement since 1968. I have had the honor of working in three different cities, including the one I'm in now, and I really do appreciate what the men and women of law enforcement do every single day and how dangerous the job is.

I'm also very aware of just how they're constantly scrutinized over every little thing when you only have seconds to make a decision on the street. Others take months and sometimes years to pick apart every single thing you do to find out whether or not you did it properly or improperly.

I took the actions that I felt were necessary to continue to guide this department, to instill discipline, to see to it that our members conduct themselves in a professional way every single time they go out there. They owe it to the public. They owe it to themselves, and more importantly, they owe it to every member of law enforcement, no matter where they may be in this country.

I have to say in this case that, although the discipline was warranted in my opinion, I do not and did not think – I have no legal training, but my personal opinion, not my professional opinion because I have no legal training – I did not think it rose to a criminal level.

The head of the Philadelphia Police Department's Office of Professional Responsibility, Chief Inspector Anthony DiLacqua, who is overseeing the IAD investigation, also confirmed that the standard for disciplinary action is very different from what it is for criminal charges. He was supportive of Commissioner Ramsey's direct action in this case, and he agreed with the Commissioner's opinion that the officers' actions did not rise to the level of any crime:

It comes down to a question of culpability and intent. If these officers wanted to drag these guys out of a car and beat them, that certainly would be a crime. Their intent was to make an arrest.

They were seconds earlier, literally seconds earlier in a pursuit of a car that they knew had three suspects, that at least one weapon was thrown from. They were unsure of what other weapons may have still been in the car.

The car is stopped. The people in the car refused to get out of the car, refused to unlock the car door. They were met with resistance.

These three men were anything but compliant. They were combative. You may say they didn't come out swinging. They weren't standing and swinging and kicking, and quite truthfully, they were overwhelmed by the number of officers. That was what was able to bring them to the ground.

They stopped that car. They broke the window, opened the doors, tried to get them out of the car, and tried to get them on the ground and under control to get their hands out from under them with the intent to make an arrest, not with the intent of committing bodily injury. They weren't out to beat somebody. They were out to apprehend violent offenders.

So I look at intent and culpability and the level of injuries caused, and I don't see it rising to proof beyond a reasonable doubt that these officers were – intended to simply harm someone for the sake of harming and assaulting someone.

**The verdict in the suspects' trial does not alter our conclusions regarding the actions of the police officers.**

The Grand Jurors are aware that, while we have been investigating the actions of the police officers, another jury has rendered a verdict on the three suspects. We have all read or heard that a trial jury found the defendants – Brian Hall, Dwayne Dyches, and Pete Hopkins – not guilty of three attempted murders and related charges stemming from the multiple shooting on May 5, 2008.

That jury's verdict, however, did not influence our deliberations or change our conclusions. That jury had a different charge and heard different evidence. Pennsylvania's laws of criminal procedure and evidence require that certain types of evidence must be excluded from criminal trials to protect defendants' rights. We, on the other hand, were charged with judging the actions of the police officers, so anything that

they knew or reasonably believed is relevant to our consideration. We have made our own factual findings and do not consider ourselves bound by the other jurors' verdict.

In any case, the trial verdict ultimately holds no relevance to our determination. The evidence presented to this Grand Jury convinced us that the police arrested the right men. Independent of that conclusion, we have assessed the police officers' actions based on what they knew or reasonably believed at the time of the arrests. Based on the evidence we have seen, the police had compelling cause to believe that Hall, Dyches, and Hopkins were involved in the multiple shooting, that they were dangerous, and that they were very possibly armed. The officers' response, including their measured and targeted use of force when the men resisted arrest, was appropriate and lawful regardless of the verdict in the suspects' trial.

## Section VII

# Recommendations of the Grand Jury

Although the Grand Jury's primary concern was to investigate the facts and circumstances pertaining to the use of force by police to effect the arrests of Brian Hall, Dwayne Dyches, and Pete Hopkins on May 5, 2008, in the area of 2<sup>nd</sup> and Pike Streets in Philadelphia, we heard testimony and considered evidence that led to additional findings and recommendations.

**The police department should explore tactics that would enhance the effectiveness of high-risk car stops.**

We heard testimony that officers initially attempted to stop the suspect vehicle at 4<sup>th</sup> Street and Roosevelt Boulevard. The officers employed the "high-risk car stop" method. Ideally, in a high-risk stop, officers stop a vehicle, take a position of cover, and order the occupants of a vehicle out of their car.

Officers do not block the forward path of a vehicle in a high-risk stop because of the danger to officers. (In particular, officers both in front of and behind the vehicle could be vulnerable to crossfire if shooting breaks out.) Thus, the effectiveness of the high-risk stop assumes a level of compliance on the part of the suspect.

In this case, the fleeing car's driver, Brian Hall, defeated the high-risk stop at 4<sup>th</sup> Street and Roosevelt Boulevard through the use of a counter-tactic. Hall came to a stop, simply waited for the officers behind him to exit their vehicles, and then drove away. We

learned that it is not uncommon for suspects in Philadelphia to defeat high-risk stops through the use of this counter-tactic.

We **find** that, although the high-risk car stop is the preferred method of halting a suspect driver considered a danger to police, it is unrealistic to assume that a suspect will not seize on an opportunity to flee. We **recommend** that the Philadelphia Police Department explore tactics that might increase the effectiveness of the high-risk car stop by dealing with the potential for flight.

**The police department should adopt a policy prohibiting the placing of a foot on the head of a prone, handcuffed suspect.**

We heard from use-of-force experts who thoroughly discussed the benefits and risks of restraining a prone suspect by placing a foot on the suspect's head. These experts testified that an officer can easily, and with very little force, maintain control of a suspect with this tactic. However, a serious injury might be caused by a loss of balance on the officer's part or if the suspect struggles with the officer while in this position.

The expert witnesses also testified that no directive or policy within the Philadelphia Police Department expressly prohibits the use of this tactic. However, we believe other effective options exist to control a prone, handcuffed suspect. These options pose less of a risk to the suspect, and are also less disrespectful. For example, an officer need only bend down and hold the suspect with his or her hands.

We **find** that the risks with this tactic outweigh the benefits. We **recommend** that the Philadelphia Police Department adopt a policy prohibiting the use of a foot to the head of a prone, handcuffed suspect as a means of restraint.

**The police department should consider developing a curriculum to instruct officers how to safely place resistant suspects in patrol vehicles.**

We heard testimony that the Philadelphia Police Department has no specific curriculum for teaching recruits how to place a resisting suspect in a patrol vehicle. Although witnesses testified that force is sometimes needed to control a suspect who is in custody, we **find** that there is need for a specific training segment in this area. We **recommend** that the Philadelphia Police Department research and develop a curriculum to instruct officers how to safely place suspects, including resistant suspects, in patrol vehicles.

**The police department should establish a specialized team to handle use-of-force investigations.**

During the course of our investigation we heard testimony from use-of-force experts and police tactics trainers regarding the standard by which an officer's use of force should be judged. Based on this testimony, we believe that the reasonableness of an officer's use of force can only be determined by, first, investigating the facts and circumstances surrounding the incident and, second, by judging the officer's actions from the point of view of the trained and reasonable police officer. Accordingly we **find** that an investigator assigned to a use-of-force investigation must not only be able to collect the facts surrounding the incident but must also have an understanding of the latest police tactics and training in order to assess the reasonableness of the officer's actions.

Commissioner Ramsey testified that the Philadelphia Police Department is considering the establishment of a specialized unit within the Internal Affairs Division for use-of-force investigations. We **recommend** that the department do so. We further

**recommend** that the investigators assigned to this unit be required to remain current with the latest developments in tactics and training.

**The police department should establish a formal field training program for new recruits.**

We heard testimony during the course of this investigation that “rookie” officers Patrick Whalen and Robert Donnelly were rejected (in other words, fired) during their 18-month probationary period for their very first perceived infraction of departmental policy. We also learned from Commissioner Ramsey that the Philadelphia Police Department has had no formal field training program but is working on establishing one.

We **find** that, without formal field training in which a senior officer is charged with monitoring a new officer’s progress, probationary officers may be left to learn their job on their own with insufficient mentoring. We **recommend** that the Philadelphia Police Department adopt a field training program for new officers.

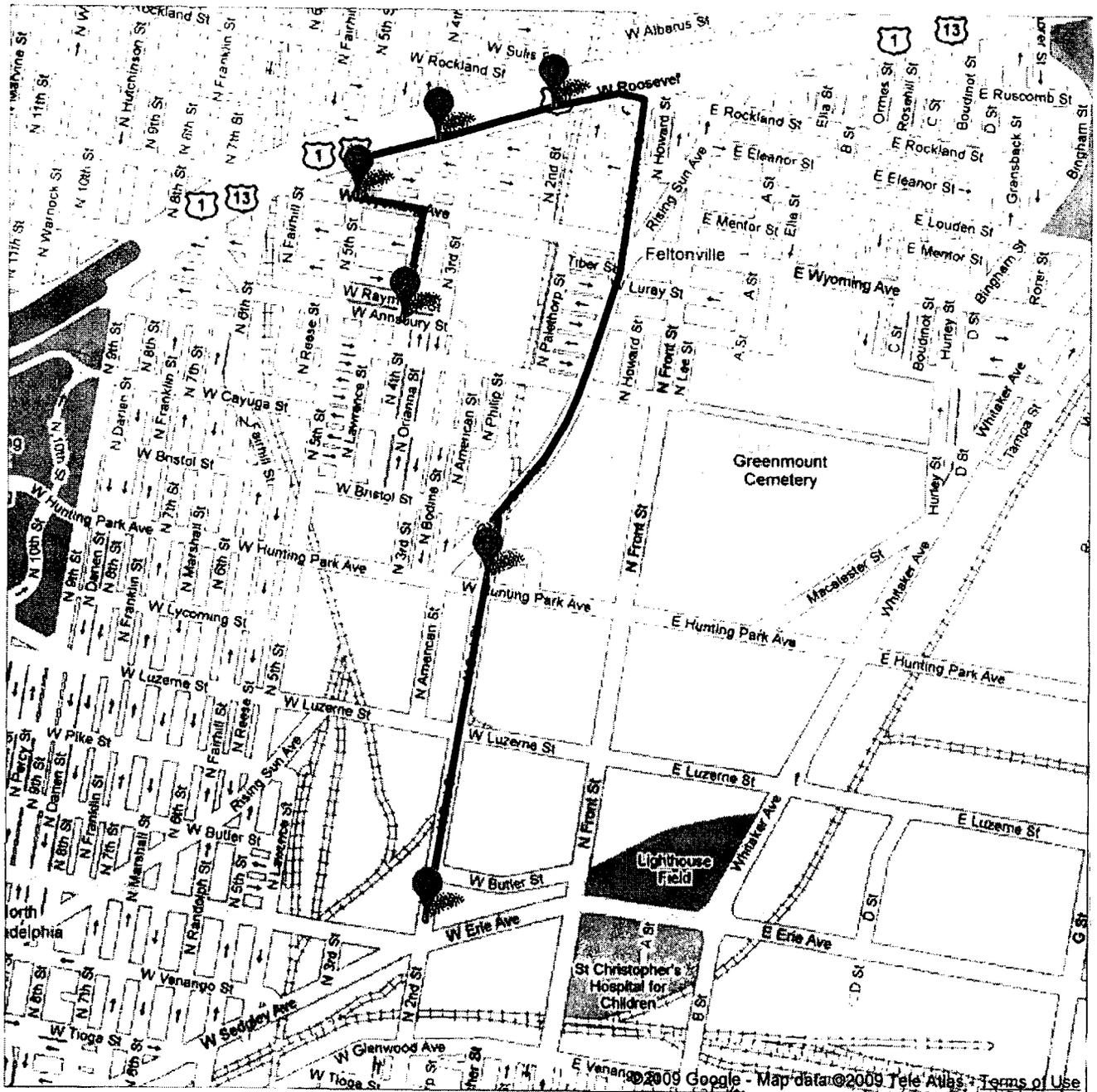
**The Internal Affairs Division should complete its investigation as soon as possible and the police department should then take appropriate action.**

We **find** that the evidence supporting the Philadelphia Police Department’s disciplinary actions, taken in the heat of uproar over the televised arrests, is not consistent with the evidence that this Grand Jury has carefully accumulated and analyzed. We **recommend** that the Internal Affairs Division complete its investigation promptly, and that the police department revisit its decision to discipline or fire eight of the officers involved in this episode and then take whatever action, if any, is appropriate.

These particular recommendations aside, we believe in general that the training and guidelines now in use by the Philadelphia Police Department properly place control over the use of force with the person being arrested. That is, if a suspect complies with police commands, officers may use no force at all. If a suspect resists, then levels of force are calibrated and limited by what is necessary to make an arrest with least risk to the police and least harm to the suspect. We therefore recommend no far-ranging overhaul of these guidelines that, grounded in hard experience, appropriately make safety a priority.

## Appendix A

### Pursuit from 4<sup>th</sup> and Annsbury Streets to 2<sup>nd</sup> and Pike Streets



#### Key

- A: Shooting at corner of 4<sup>th</sup> and Annsbury Streets
- B: Officer Delaurentiis points out Grand Marquis to Sergeant Schiavone
- C: Grand Marquis pulls over and takes off again when officers approach
- D: Grand Marquis pulled over; items thrown from vehicle
- E: Gun used in shooting at 4<sup>th</sup> and Annsbury Streets recovered
- F: Pursuit ends