
**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**

REPORT OF THE GRAND JURY

LYNNE ABRAHAM
District Attorney

RECEIVED

JUN 29 2009

**ACTIVE CRIMINAL RECORDS
CRIMINAL MOTION COURT**


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FINDINGS AND ORDER

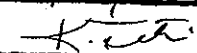
AND NOW, this ¹³29 day of July, 2009, after having examined the Report and Records of the County Investigating Grand Jury XXII, this Court finds that the Report is within the authority of the Investigating Grand Jury and is otherwise in accordance with the provisions of the Investigating Grand Jury Act, 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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Section I

Introduction to the Grand Jury Report

On May 5, 2008, police officers in the area of 2nd 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 4th and Annsbury Streets in the Feltonville section of Philadelphia. As a member of the Narcotics Enforcement Team assigned to the 25th 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 25th 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 4th and Annsbury Streets. He was watching four men: three sitting on steps on the northwest corner of 4th 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 4th Street and park on the east

side of 4th 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 4th Street. As Hall slowly made his way toward the corner where the four men were, two more men and two women walked south on 4th 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 4th 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 4th 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 4th 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 5th Street. The third was found two blocks away, at 4th 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 4th Street just past Annsbury. After several blocks, the suspects' vehicle turned left on Wyoming Avenue, heading toward 5th Street. Delaurentiis followed in his unmarked car, without flashing lights or siren. At 5th 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 35th police district to investigate the gunshots they had heard. Sergeant Joseph Schiavone was standing outside one of the vehicles on 5th 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 5th 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 5th 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 4th 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 4th 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 4th 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 2nd 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 2nd 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 2nd 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 2nd 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 2nd 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 4th and Annsbury Streets. Hall also acknowledged that he

briefly stopped the Grand Marquis along the pursuit route – at 5th 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 4th 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 4th 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 4th Street shooting when he spoke to Officer Buitrago. After securing the scene of the shooting, Buitrago had come to 2nd 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 4th 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 4th 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.