CITY OF OAKLAND

Memorandum

TO: Training Section
ATTN: Lieutenant Kevin Wiley
FROM: Bureau of Field Operations
DATE: 30 Jul 11

RE: Draft EFRB report 10-1568 (Officers Eriberto Perez-Angeles and Omar Daza-Quiroz)

The draft report was submitted to Chief Batts. Shortly thereafter Chief Batts met with Deputy Chief Breshears, Deputy Chief Israel, Assistant Chief Jordan, Captain Paul Figueroa, Lieutenant Sean Whent, and Sergeant Chris Bolton to discuss the draft report and the Board's recommendations.

Considerable discussion focused on why the Board did not agree with the IAD investigator's sustained findings regarding tactics. Specifically, when Perez-Angeles and Daza-Quiroz failed to use available vehicles for cover and concealment when they were on Trask chasing Jones towards the fence where Jones was eventually shot. Instead, both officers ignored Department training and policy to use such cover and concealment when attempting to apprehend armed suspects.

The SME (Sgt. M. Reilly) also agreed that officers should have used the available concealment, although he stated that the vehicles did not provide cover. We find his conclusion contradictory to training and policy. However, we agree that concealment was available and not used in this case.

Failing to use available cover unnecessarily exposed officers to an armed threat they both believed was capable of deadly force. Instead of seeking and using available concealment and cover, they chose to fully expose themselves leaving them no option except to use deadly force when Jones did not comply with their orders and reached into or near his waistband.

Not only did they foolishly risk their own lives, but their poor tactics created an exigency that resulted in the loss of life of an unarmed man.

Through out the officer's statements they described their fear that Jones was armed with a gun. They stated that Jones kept reaching for his waistband and was holding something in his hand. Jones fled and failed to comply with any of their orders. They heard a metal object sliding on the ground they both believed was a gun. They believed Jones was a felony suspect wanted for attempted murder yet in spite of all of these dangers, they both continued to pursue Jones to within 7 feet of him and leaving available cover and concealment even when

Jones no longer had an avenue of escape.

This is also in spite of a previous incident Daza-Quiroz referenced where a combative suspect took Perez-Angeles' gun from him demonstrating the importance of maintaining distance. Perez-Angeles speaks of the importance of maintaining a safe distance in his statement because he believes Jones is armed but he too closed the distance, left available cover and concealment, and pursued Jones to within 7 feet.

In addition, Trask was dark, poorly lit, narrow, and had several vehicles parked along the curb.

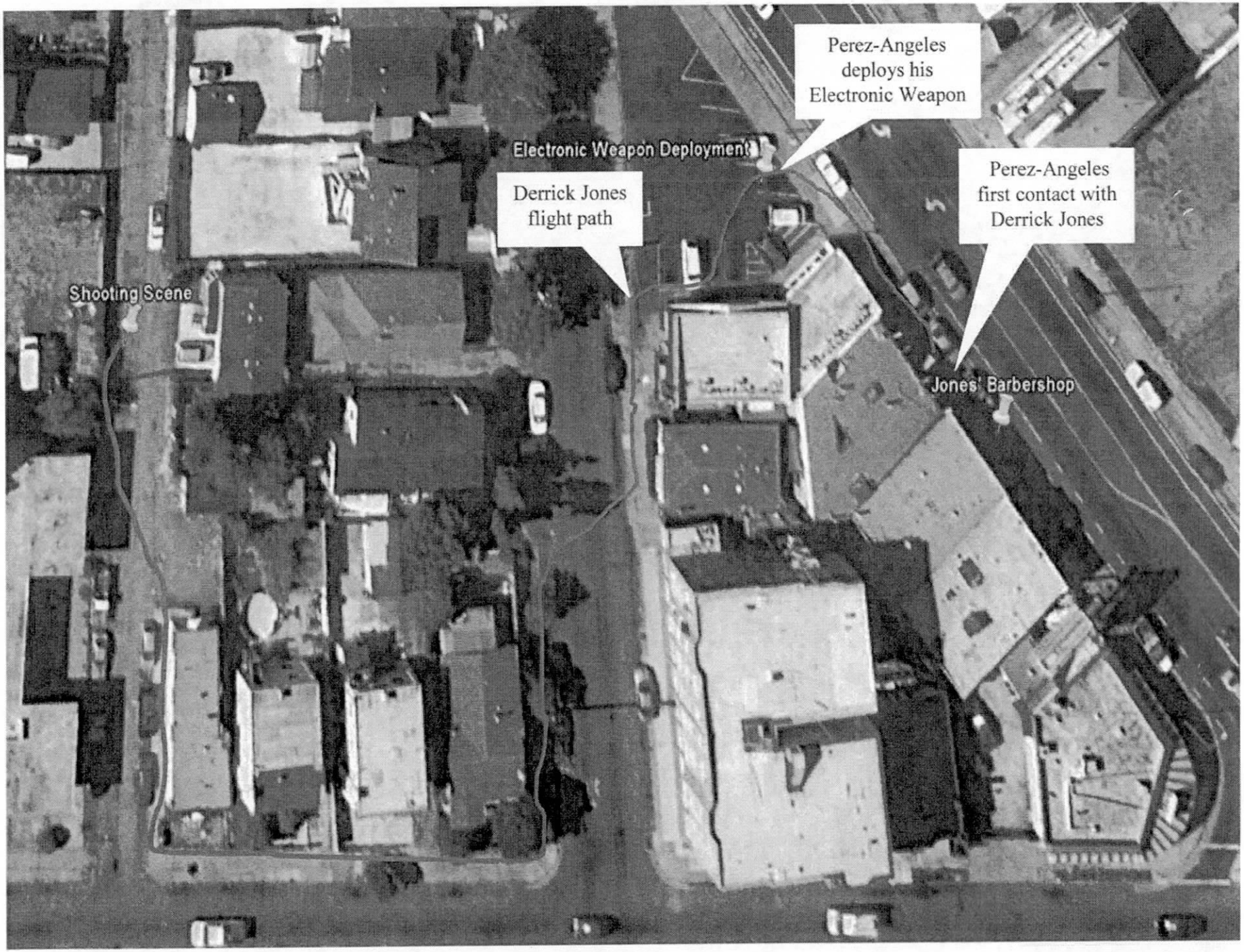
Of particular note is the fact that these same officers were involved in a previous shooting where the EFRB identified the same tactical errors. The EFRB recommended both officers receive training directing them to use available cover when they believe a suspect may be armed.

After reviewing the IAD incident report and carefully considering the facts, we must agree with the recommendations for sustained findings for both officers regarding their poor tactics.

Jeffrey H. Israel
Deputy Chief of Police
Bureau of Field Operations I (West)

Eric Breshears
Deputy Chief of Police
Bureau of Field Operations II (East)

OK'd AWB 8/10/11


Perez-Angeles deploys his Electronic Weapon
Electronic Weapon Deployment
Derrick Jones flight path
Perez-Angeles first contact with Derrick Jones
Shooting Scene
Jones' Barbershop

EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
10-1568 [28 Apr 11]

- **Officer Eriberto Perez-Angeles 8803**
- **Officer Omar Daza-Quiroz 8712**

Date of IAD ROI: 22 Mar 11
Date of Board: 28 Apr 11
Date of Report: 21Jun 11 (three extension were granted collectively until 23 Jun 11)

In accordance with Departmental General Order K-4.1, Force Review Boards, an Executive Force Review Board was held on April 28, 2011, to examine the factual circumstances surrounding a Level 1 use of force by Oakland Police Officers Eriberto Perez-Angeles 8803 (Perez-Angeles) and Omar Daza-Quiroz 8712 (Daza-Quiroz): Discharge of a firearm causing death.

The investigation of this matter revealed that Oakland Officers were "flagged down" by an assault victim, Ms. (b)(5)(B) who told officers that that her boyfriend, Derrick Jones (Jones) had attempted to kill her by choking her. Whitaker directed the officers to a barbershop in the 5800 block of Bancroft Avenue where Jones apparently worked.

Officers Perez-Angeles and Daza-Quiroz directed Officers Mega Lee 8831 and Yanicka Taylor 8886 to contact and remain with Whitaker while they (Perez-Angeles and Daza-Quiroz) responded to the barbershop to look for Jones.

Once in the parking lot of the barbershop (Clean Scene), Officers Perez-Angeles and Daza-Quiroz contacted a male they believed might be Jones. They determined it was not Jones and let him go. After this, Officer Perez-Angeles contacted a male in front of 5823 Bancroft who was shutting the front door of the barbershop. When asked by Perez-Angeles if he was Derrick Jones, the male put his hands in his pockets and looking surprised, responded, "No, no man, Derrick Jones ran." At that point, Daza-Quiroz came on scene. Daza-Quiroz, believed this male was in fact Derrick Jones based upon the recent updated description provided by Officers Taylor and Lee. In addition, Daza-Quiroz believed this male was responsible for a range of violent crimes and so, elected to arrest the individual. Officer Daza-Quiroz continued to ask the male (later determined to be in fact Derrick Jones) to take his hands out of his pockets. He then directed Officer Perez-Angeles to handcuff him. Officer Daza-Quiroz asked Jones his name and Jones provided him with a false name as he continued to ignore the officer's orders to remove his hands from his pockets. Officer Daza-Quiroz told Jones to turn around and put his hands behind his back but instead, Jones swung his arms out and began running from the officers.

Both Officers Perez-Angeles and Daza-Quiroz pursued Jones on foot – yelling for him to stop. Officer Perez-Angeles deployed his electronic weapon, striking Jones in his lower back area; however, the weapon had little to no effect and Jones continued to run from the officers.

In all, Jones ran eastbound on Avenal to southbound on Seminary to westbound on Trask. As Jones ran south on Seminary, the officers lost sight of him but heard what appeared to be a loud metal sound hit the ground. Once on Trask, Officer Perez-Angeles saw Jones lying face down near a vehicle. Officer Perez-Angeles pointed his department issued firearm at Jones and began to give him orders. Jones refused to comply and got up and ran southbound towards a fence on Trask. There, Jones placed his hands on the fence as if to climb over it.

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Officers Perez-Angeles and Daza-Quiroz approached Jones who let go of the fence, turned and reached for his front waistband area. Daza-Quiroz yelled for Jones to get his hands up. Jones reached towards his front waistband or pocket area. Both officers felt Jones was pulling out a gun. Fearing for their lives, they fired their department issued firearms striking Jones. They advised of shots fired and requested additional assistance.

In the same proximity, Officers Perez-Angeles and Daza-Quiroz saw there were subjects inside a Ford Bronco parked 16-17 feet east of their location. They were not sure if the occupants were involved with Jones and if Jones had handed them anything. Additional officers arrived and removed the three subjects from the vehicle at gunpoint. Officers then provided CPR to Jones.

Jones was pronounced deceased at the scene by AMR 2558 at approximately 2201hrs.

The following personnel were in attendance at the Executive Force Review Board:

VOTING MEMBERS	
ASSIGNMENT	NAME
Bureau of Services	A/Captain Kevin Wiley
Bureau of Investigation	Deputy Chief Jeffrey H. Israel
Bureau of Field Operations	Deputy Chief Eric Breshears

NON-VOTING MEMBERS	
ASSIGNMENT	NAME
Internal Affairs Division	Lieutenant Donna Hoppenhauer
Office of Inspector General	Lt. Sean Whent
Deputy City Attorney	Amber Macaulay
Commander of Subject	Captain Ersie Joyner
SME – Taser	Sergeant Greg Dutton
Patrol Procedures	Sergeant Michael Reilly
Firearms	Officer John Fukuda
Training Commander	Act. Lt. Bryan Hubbard

PRESENTERS	NAME
Internal Affairs Division	Sergeant Dan Royal
Homicide Section	Sergeant Gus Galindo

EXECUTIVE FORCE REVIEW BOARD
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ADDITIONAL ATTENDEES	
Force Board Coordinator	Officer Don Koch
Crime Lab	Criminalist III Mark Bennett
Internal Affairs Division	Sgt. Jimmy Wong
Internal Affairs Division	Sgt. John Lois
Internal Affairs Division	Capt. Figueroa
OIG Annuitant	Mr. Gino DeNardi
Mayor's Office	Policy Analyst Reygan Harmon
CPRB	CPRB Director Patrick Caceres
CPRB	Complaint Investigator Karen Tom

BOARD RESPONSIBILITIES

The meeting was opened by reviewing the Board's responsibilities (G.O. K-4.1, FORCE REVIEW BOARDS, I., B., 1 Aug 07):

- Force Review Boards are convened to evaluate force investigations, in-custody death investigations, and any related administrative or criminal investigation. The Board shall determine whether the force used was in compliance with departmental policies and procedures and will identify any policy revision, training, tactical or other issues related to the use of force. The Chief of Police may direct a Board to review any use of force incident.

- The Executive Force Review Board is convened to review all Level 1 uses of force or any in-custody death incident.

- The analysis, findings and conclusions of this Board are strictly administrative and intended for self-evaluation, risk management and training, and to determine violations of policies of the Oakland Police Department. Nothing related to these proceedings shall be considered or interpreted as proof of liability.

TACTICS/TRAINING ISSUES

The board discussed tactics and training issues and concluded that:

- **Tactics used by Oakland Officers:** Much discussion took place regarding the officer's decision to continue to chase Jones on foot after losing sight of him as opposed to stopping and setting up a perimeter. The board had further questions on this issue and directed IAD Sergeant Dan Royal to follow-up with the Department's subject matter expert (SME) Sergeant Mike Reilly on the tactics employed by the officers leading up to the shooting. {See deliverable #1 for cross reference to this request}.

On 2 May 11, Sergeant Royal interviewed Sergeant Reilly who stated, "Overall I feel pretty good about their tactics. I like the articulation that they used when they spoke to we offset, we slowed around corners; I used this car for cover. In essence he was saying, he was using the final car as cover. It sounds like he perceived he was. Their thinking and talking about the things and sounds like doing the things that we have been teaching. That we really like to see. Is this perfect, it's not perfect. But there's no perfect operation, or perfect foot pursuits, or perfect entries, um but this is their mindset and what they were talking about and sounds like what they did which were very good."

Although this follow-up interview did answer some of the questions being raised by the Board, the bigger issue regarding the involved officers perception of a potential ambush and the tactics they employed still warranted further analysis. Sergeant Royal was again directed to interview Sergeant Reilly to clarify these matters.

On 9 May 11, Sergeant Reilly responded to Sergeant Royals' email as follows:

Sergeant Royal:
"If an officer is faced with perceiving they are entering an ambush is it tactically correct to close the distance?"

Sergeant Reilly:
"In most instances it would not be tactically sound to proceed into an ambush. The question in this case is whether they truly believed they were entering an ambush or are they simply explaining why they took the actions they did. They have received training that supports the notion that when an officer loses sight of a suspect rounding a corner in a foot pursuit it is prudent to slow the pace of the pursuit to clear or "pie" the corner. Officers are taught this to avoid a potential ambush or assault. As I've stated previously, the OPD has not conducted scenario based training that is applicable to this scenario. The training that has been conducted centers around the idea that foot pursuits should end at the point the suspect enters a rear yard. When this happens, officers are encouraged to end the foot pursuit and set a perimeter. In the

case at hand, officers perceived a potential danger and mitigated it by slowing the pursuit, "pieing" the corner, and searching the street in a slow methodical manner as they have been trained."

In light of the continuing question on the officer's perceptions around the ambush issue, on 12 May 11, I directed Sergeant Royal to re-interview both subject officers and obtain specific answers to the following questions:

Did you believe you were going into an actual ambush and if so, why?
Do you recall what you were taught about entering ambushes, i.e., were you taught to enter or not enter such areas?

On 25 May 11, Sergeant Royal conducted follow-up interviews with the subject officers, with their LDF representatives present:

Officer Daza-Quiroz

Name	Response (Transcribed to the best of my ability)
Royal	Did you believe you were going into an actual ambush and if so, why?
Daza-Quiroz	No I did not
Royal	Do you recall receiving training or what you were taught about entering ambushes?
Daza-Quiroz	Yes I was
Royal	And what were you taught as far as ambushes? Were you taught to enter or not enter such areas
Daza-Quiroz	Not to enter
Royal	Okay! And do you remember where you received that training?
Daza-Quiroz	With the Oakland Police Recruit Academy, Um also during um pretty much everyday during like lineups pretty much they told you if you are going to enter an ambush or if you expect to enter an ambush, make sure you have adequate um resources as far as officers, um any other type of resources as far as air support, K-9, perimeter established, so forth. (Prior to going off tape Hoffman asked Daza-Quiroz to clarify if he truly meant everyday and he referred to as a reminder when it comes up during line up.)
Royal	And once again going back to that day you would, you did not believe you were going into an actual ambush?
Daza-Quiroz	Correct um, when we had rounded the corner, um my understanding was okay he possibly could be here, he possibly could not. I don't want him just laying

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	underneath a car while I'm trying to establish a perimeter. Um where he could probably just shoot you from underneath the car, from next to the car. So we should probably clear the area first. Make sure and find out where direction of flight is so that way I could establish a perimeter. But that are needs to be cleaned first. Cleared first so I could establish a perimeter and so we can be safe there as far as me and my partner.
Royal	Where you utilizing what cover was near you at that time?
Daza-Quiroz	Vehicles, um there were vehicles near us, and then also Officer Perez-Angeles was near by me, I didn't lose sight of him, we maintained communication.

Officer Perez-Angeles:

Name	Response
Royal	Going back to the night of the officer involved shooting. Did you believe you were going into an actual ambush and if so, why?
Perez-Angeles	No
Royal	Do you recall if you were taught anything about entering ambushes, i.e., were you taught to enter or not enter such an area?
Perez-Angeles	I was taught not to enter.
Royal	And was that from Academy Training or?
Perez-Angeles	Training Bulletin, and uh Academy Training
Royal	Okay are you part of the Entry Team?
Perez-Angeles	Yes
Royal	Did you receive any additional training when it came to things of that nature?
Perez-Angeles	Yes, also in the Entry Team and PRO Program.

On 15 Jun 11, I received and processed an addendum report from IAD (prepared by Sergeant Dan Royal and endorsed by Acting Captain Sean Whent (IAD Commander) which recommended that both subject officers be sustained for Performance of Duty (MOR 314.39-2) for their unsound tactics which violated OPD Training Bulletin "Techniques to Gain a Tactical Advantage Over a Suspect in a Solo Foot Pursuit."

On 16 Jun 11, I met with Deputy Chief Jeffrey Israel, Deputy Chief Eric Breshears and IAD Acting Captain Sean Whent to discuss the IAD findings. As a result of this meeting, the following training issues were raised that warranted a follow-up meeting/discussion with the

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SME, Sergeant Mike Reilly, on what OPD has trained officers in regards to foot chases involving two officers of individuals that:

- ❑ Are wanted for an attempted murder
- ❑ Are actively fleeing police;
- ❑ Are believed to be in possession of a firearm
- ❑ The officers have lost sight of down a street
- ❑ The officers believe has a tactical advantage over them
- ❑ The officers have a tactical disadvantage
- ❑ The officers believe the suspect might be laying in wait (setting to ambush them);
- ❑ Involves officers entering a scene containing the above facts without a first setting a perimeter

A meeting was scheduled to discuss these items with Sergeant Reilly for Tuesday, 21 Jun 11 at 11:30 AM at the BFO Conference Room.

On Tuesday, 21 Jun 11, at about 11:30 am, the Board (Acting Captain Whent was not present and although not a member of the Board, was invited) held a follow-up meeting and discussed the above issues with Sergeant Mike Reilly. When asked if the officers tactics were consistent with what was and is currently being taught, Sergeant Reilly commented, "Textbook what we teach."

As a result of this follow-up meeting and the range of issues discussed, the board unanimously found that the officers were in fact in compliance with current training practices and did not violate Training Bulletin III-Z (dated: 22 Jan 03) "Techniques to Gain a Tactical Advantage Over a Suspect in a Solo Foot Pursuit", as cited by the IAD investigation. While this 22 Jan 03 Training Bulletin does have vague language that is applicable to this situation, its policies apply to solo officer foot pursuits and not those involving two or more officers. In essence, the Training Bulletin does not apply to this incident and therefore cannot justify a sustained finding.

The Board recommends that the pending foot pursuit policy (currently under review with the OCOP) clearly addresses two-officer foot chases as well as other items, e.g., calling out a suspect if appropriate as opposed to entering a danger zone; recognizing and responding to situations in which officers are at a tactical disadvantage and conducting continuous assessment of any foot pursuit and seeking additional resources and personnel as necessary to make the situation as safe as possible.

The Board will schedule a future meeting with the subject officers to discuss these training points.

❑ **Collection, processing and preservation of evidence** was also discussed with the following items being noted:

1. A VHS box was not collected from the scene; however, it was photographed next to Jones' body. It is possible the technician and the officers did not know until after they had left the shooting scene that this item was relevant/part of the case.

2. Jones' body was searched by officers after he was "pronounced" and items removed from his person were stacked for the evidence technician to process. It was determined that only the Coroner has the legal right to search a deceased person's body and that the officers were not authorized to perform this task. Questions arose that this search might have taken place in the early stages of First Aid being administered to Jones as to prevent Jones from possibly retrieving a weapon from his person.

3. Scene control and management by supervisors and/or investigators was discussed insofar on how assignments were given to officers to interview witnesses and collect evidence. In addition, a second issue was raised of who has the responsibility and authority to "release" the crime scene and order officers to clear. Collectively, it was determined that this was a chaotic event with numerous individuals on-scene who were not necessarily involved in the case/shooting. Once locked-down, the on-scene supervisor should have ensured assignments were properly given and documented and tasks completed as directed. Further, a more formal transition of the crime management and control was warranted. Once on scene, the follow-up investigators are in charge and coordinate further activities with their Patrol counter-parts, to include Patrol supervisors and commanders. Once the crime scene has been properly processed and the Evidence Technicians have finished their tasks, the investigator and only the investigator shall give the order to secure and clear.

ADEQUACY OF EQUIPMENT

No issues were raised or discussed on this item. Based upon the reports, all equipment available and utilized was operational and appropriate.

POLICY AND PROCEDURES

As stated, the new foot pursuit policy, under Training Bulletin TB-III-Z - "Chase and Contain" has yet to be approved by Chief Batts. As of the time of this report, it is expected that another formal presentation of the policy with be made to the Chief in the next 2-weeks if not sooner.

RECOMMENDED FINDINGS

The members of the Board determined the statements of the officers, witnesses, materials presented, and information provided by investigators, were sufficient to render a finding.

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The Board unanimously voted that the firearm discharges by Oakland Officers Perez-Angeles and Daza-Quiroz to be **Compliant with Policy** and in accordance with the provisions of Departmental General Order K-3 (Use of Force Policy).

DELIVERABLES

1. The Board Chair will ensure that the new "Chase and Contain" policy addresses the issue of officers losing sight of an individual on the street and to what type of tactics should be employed in those circumstances. Further, training on this item will take place at the Patrol Line-ups, Continuation Professional Training (CPT) sessions and during the 8-Hour Range Shoot under the Force Options segment.

2. The Commander of the Internal Affairs Division to follow-up on investigative items as follows:

The IAD investigator, Sergeant Dan Royal; to interview the Patrol Procedures Subject Matter Expert (SEM) Sergeant Mike Reilly, on the tactics utilized by the officers – specifically their continuing to chase Jones on foot after losing sight of him. (See response under Tactics / Training on page 4 for details). **[Completed 2 & 6 May 11]** – Sergeant Reilly's recorded statement included with the IAD investigation.

Secondary task: Sergeant Royal to obtain clarifying statements from both subject officers regarding the ambush issue. [**Completed 25 May 11**]. See statements for details.

Other Information

In light of the additional statement requests, I sought and obtained three extensions on this report from AC Jordan: The first extension being 3 Jun 11; the second, 10 Jun 11 and the third, 23 Jun 11.

Respectfully submitted:

Kevin N. Wiley
Acting Captain of Police
Bureau of Services

EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
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Approved,

6/22/11

Howard A. Jordan
Assistant Chief of Police

Approved,

Anthony W. Batts
Chief of Police

Date: _____

EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT

28 Apr 2011

E. Perez-Angeles 8803, O. Daza-Quiroz 8712

ATTENDANCE ROSTER

***ATTENTION: Your signature below acknowledges matters discussed during Executive Force Review Board hearings are personnel matters. As such, the issues discussed and outcomes of these hearings are privileged and confidential and shall not be communicated to other persons without a legal right to know.**

VOTING MEMBERS	NAME	DESIGNEE	SIGNATURE
BOS - Chairperson	Act. Captain K. Wiley		
BFO	Deputy Chief E. Breshears		
BOI	Deputy Chief J. Israel		

NON-VOTING MEMBERS	NAME	DESIGNEE	SIGNATURE
Discipline Officer	Lieutenant D. Hoppenhauer		
IAD Commander	Captain P. Figueroa	Paul Figueroa	
Deputy City Attorney	Ms. Rocio Fierro	Amber Macaulay	
Commander of Subject	Captain E. Joyner	E. JOYNER III	
Homicide Commander	Lieutenant. B. Medeiros		
Training Commander	Act. Lt. M. Guttormson	BHUBBARD	
Patrol Procedures Instructor	Sergeant M. Reilly		
Firearms/Pat. Pro.	Officer J. Fukuda		
TASER Coordinator	Sgt. G. Dutton		

PRESENTERS	NAME	SIGNATURE
Homicide Investigator	Sgt. G. Galindo	
IAD Investigator	Sgt. D. Royal	
IAD	SGT J. WONG	
IAD	JOHN LOIS	

ADDITIONAL ATTENDEES	NAME	SIGNATURE
Asst. Chief of Police	Assistant Chief H. Jordan	
OIG	Capt. A. Toribio	
IMT		
FORCE BOARD COORD.	OFF. D. KOCH	
~~IAD~~ OIG	GINO DIANNARDI	
OIG	S. WHEN	
Mayor's Office	Reagan G. Harmon	
CPRB	Patrick Caceres	
CPRB	Karen Tom	