

CITY AND COUNTY OF DENVER



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PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING AN OFFICER-INVOLVED SHOOTING BY CORPORAL MICHAEL WYATT IN THE 1400 BLOCK OF LOGAN STREET ON MAY 25, 2005

I. SYNOPSIS

Corporal Michael Wyatt and his partner, Officer Mike Miller, turned their Denver police car from northbound Logan Street onto westbound Colfax Avenue at about 1:30 a.m. on May 25, 2005, where they were confronted with an alarming sight. Bleeding and terrified, Issiaka Namoko was out in the middle of Colfax Avenue, just east of Logan, frantically trying to flag down the officers. When Mr. Namoko made it to their marked patrol car, he reported that he had just been beaten and robbed at gunpoint on the corner of Colfax Avenue and Grant Street. It had been only moments earlier, when a cab driver came upon the assault and robbery, that Mr. Namoko had the chance to run from his assailants. One of them, while still carrying a gun, followed Mr. Namoko continually threatening to kill him. That assailant was later identified as Harrison Owens. As he was running away from Owens, eastbound down the middle of Colfax, Mr. Namoko saw the marked Denver Police car with the two uniformed officers riding in it. As Mr. Namoko ran up to the car, he could hear Owens behind him yelling that Namoko was "not going to get out of this" and that he (Owens) was going to "kill both those motherfuckers [the two officers] and you too". An associate of Owens who had participated in the assault and robbery was following Owens.

While reporting to the officers that he had just been robbed and assaulted at gunpoint, Namoko pointed at Harrison Owens and said that he was the one with the gun. Owens was, at that point, on the sidewalk across the street, on the south side of Colfax Avenue. He was about thirty feet away from the officers and was walking eastbound toward Logan Street. Owens was a large, African-American man with long curly hair. Corporal Wyatt had been informed earlier that Denver Police were looking for a large African-American male, with dreadlocks, who was armed and committing street robberies in the neighborhood. Because of Mr. Namoko's report and because of the similarities between Owens and the robber for whom the police were looking, Corporal Wyatt drew his gun as he got out of the car and approached Owens. Pointing his weapon at Owens, Corporal Wyatt immediately yelled at him to get down and show his hands.

Owens did not comply. Instead, he started walking faster towards Logan Street. Corporal Wyatt could see that Owens was holding something with his right hand at the waistband of the baggy shirt he was wearing. Owens began to run as Corporal Wyatt got closer and then turned southbound on Logan Street. Corporal Wyatt ran after Owens with his gun out, all the while radioing in that he was in a foot pursuit with an armed suspect in the 1400 block of Logan. While chasing Owens, Corporal Wyatt kept yelling commands at him, saying "Police", "Stop", "Show me your hands". Owens kept his hands hidden and was holding onto something or doing something with his waistband. At mid-block, Owens turned around a tree into a parking lot. By this point, Corporal Wyatt had closed the distance between himself and Owens from about thirty to thirty-five feet, down to ten to twelve feet.

As Owens turned around the tree at the edge of the parking lot, Corporal Wyatt could see the butt of a dark gun against Owens' white shirt. The Corporal could also see that Owens had his hand on the butt of that gun. Just as Corporal Wyatt came around the same tree, he saw Owens with the gun in his right hand. Owens was moving the gun back towards the right where Corporal Wyatt was following. The Corporal said it was "like he was pointing it back at me". They were only ten to twelve feet apart at that point. Believing that Owen was going to shoot at him, Corporal Wyatt fired. His one shot fatally wounded Owens.

Autopsy evidence established that the bullet hit Owens at a 45 degree angle. The wound track was consistent with Owens having his right arm turning behind him at the moment he was struck by Corporal Wyatt's bullet. Additionally, Owens was found to have methamphetamines and cannibinoids in his bloodstream and a blood alcohol level of .161 percent, twice as high as the current legal limit for driving.

A gun was recovered near the outstretched arm of Harrison Owens after he fell to the ground wounded. It was a Smith & Wesson .44 caliber revolver which was fully loaded with six .44 special caliber rounds. The gun was test fired and found to be in good mechanical order. Corporal Wyatt's Sig Sauer P226, semi-automatic 9mm pistol was taken for testing. When unloaded, the 15 shot weapon was found to have 14 rounds remaining – consistent with Corporal Wyatt's statement, which was also confirmed by numerous witnesses, that he only fired one shot. Additionally, only one 9mm shell casing was found at the scene, which is consistent with only one shot being fired by Corporal Wyatt.

Dispatch tapes recorded Corporal Wyatt's call that he was pursuing a party with a gun southbound on Logan Street. The tape clearly records Corporal Wyatt screaming "Drop it", before he calls in "shots fired". Numerous citizens in neighboring apartments confirmed that Corporal Wyatt identified himself as a police officer, gave commands to "drop the gun" and to "show your hands".

Officer Miller and several citizens arrived at the scene immediately after the shooting. Numerous people corroborated Corporal Wyatt regarding the details of the event.

An investigation into this incident was conducted by the Denver District Attorney's Office and the Denver Police Department. Because this case occurred before the

Office of the Independent Monitor¹ opened its doors on August 1, 2005, the Monitor was not on scene and did not have direct participation in the early stages of the investigation. However, the Monitor became involved in the administrative review of the shooting after the homicide investigation was complete. The Monitor's Office was provided with copies of the entire Homicide Bureau investigation and examined the officer's actions in relation to Department training and policy.

Based upon the facts and circumstances of the case, the District Attorney concluded that no criminal charges should be filed against Corporal Wyatt. As noted by the District Attorney in his abbreviated letter dated October 28, 2005:

Under the facts of this case, Corporal Wyatt's conduct was justified under C.R.S. 18-1-707(2)(a) & (b)(1) & (2). We could not prove beyond a reasonable doubt that it was unreasonable for Corporal Wyatt to perceive that Owens was an imminent deadly threat to him at the instant he fired the single shot that killed Owens. Additionally, Owens had just committed a felony involving the use or threatened use of a deadly weapon and was attempting to escape by use of the deadly weapon. Therefore, no criminal charges are fileable against Corporal Wyatt for causing the death of Harrison Owens.

The Chief of Police also reviewed the investigative file and determined, based upon the totality of the circumstances, that the involved officer had not violated any Department rule or policy. The Independent Monitor, who provided suggestions, input and consultation on the case, agreed with the determination of the Chief of Police.

After a careful, independent consideration of all the evidence, it is the conclusion of this Office that no disciplinary action should be or will be taken against Corporal Wyatt for his involvement in this shooting incident on May 25, 2005. This decision is based on the determination that Corporal Wyatt reasonably believed that Harrison Owens' actions posed an imminent threat of death or serious bodily injury. Additionally, Corporal Wyatt reasonably believed both that Owens had just committed a felony involving the use or threatened use of a deadly weapon, and that he was attempting to escape by use of the deadly weapon. All three of these determinations justify, independently and collectively, Corporal Wyatt's response in using deadly force. Under these circumstances, this Office has determined, consistent with the determinations of the Police Department and the Independent Monitor, that Corporal Wyatt's use of deadly force against Harrison Owens on May 25, 2005 was reasonable under the Denver Police Department's Use of Force Policy.

¹ The mission of the Office of the Independent Monitor (OIM) is to monitor the Denver Police Department and other Denver law enforcement agencies and to provide fair and objective oversight of the uniformed personnel. OIM has been fully integrated into the Denver Police Department's officer-involved shooting procedures. OIM responds to the scene of such shootings, observes and participates in both the criminal and administrative investigations, has access to and reviews complete files and makes recommendations to fact finders and decision makers throughout the case, including making recommendations to the Manager of Safety and the Chief of Police.

II. DETAILED FACTUAL BACKGROUND

As part of its analysis of any officer-involved shooting case, this Office reviews in detail all of the video and/or audio taped interviews of every witness who is interviewed. In this case, there were numerous video and audio interview tapes, each of which required hours and hours of close listening and scrutiny. Additionally, hundreds of pages of case reports were reviewed, which included written statements from the taped witnesses as well as other witnesses who could not be interviewed on video or audio tape. As is its practice, this Office also undertook a very meticulous review of the entirety of the case file. The reports and interviews provided a voluminous amount of factual information on which this Office has relied in reaching its findings. Some of the interviews and reports considered are summarized below, both for ease of reference and to provide an overview of some of the sources upon which this detailed factual background is based.²

Before Corporal Wyatt and Officer Miller drove into the middle of Issiaka Namoko's flight from Harrison Owens, Owens' aggressiveness had captured the attention of a number of people.

During the evening of May 24, 2005, a young college student, DJ, had gone to the Congress Bar at 308 East Colfax Avenue, to meet some friends for drinks. At closing time, DJ, her friend, Issiaka Namoko, and a young woman who they had just met in the bar, decided to get something to eat. They called a cab from the Congress Bar and were waiting outside on the curb for the cab. DJ was standing along the curb when a car carrying Harrison Owens pulled up right next to her, almost hitting her. DJ knew Harrison Owens, nicknamed "H", because he had worked with her mother in the past.

As Owens got out of the car, DJ complained to him that he had almost hit her. She explained in her videotaped interview that Owens didn't even respond. Instead he hurried down the sidewalk after a man in a red Hawaiian style shirt. DJ described Owens' behavior, saying: "H is tripping on him" [the guy in the red shirt]. DJ heard Owens saying to the man, "that ain't cool". She goes on to say that, "H gets up on him, gets in his face". As she watched, DJ could hear the man in the red shirt protesting, and then she saw Owens hit the man several times. The man stumbled into the street and was almost hit by a car.

Shortly before Owens struck that man, the young woman who was going to accompany DJ and Issiaka Namoko to dinner had walked back to the location where Owens first confronted the man. After hitting and pushing the man into the street, Owens turned to this young woman. While DJ looked on, Owens started arguing with this woman. The young lady began walking away from Owens, but he followed her, continuing the apparently one-sided argument. DJ was so concerned about Owens' behavior that she went over to the two of them to get the young woman to come with

² For the purposes of this public statement, certain witnesses not directly involved in the officer's use of force are identified by initials only. However, their full identities are contained in the Denver Police Department investigative files related to this case.

her. As she told it, DJ said to the young woman to come with her, to "just get out of there". As she caught up to the young woman, Owens was "following them, they cross the street, and here comes H [Owens] across the street, following them – yelling".

DJ explained that the way Harrison Owens was acting on this night was "the way he always is – he was just worse tonight". She has known Owens to take "speed" and "ecstasy" and although she had not seen his gun on this night, she knew that Owens' had a reputation for carrying a gun.

DJ then explained that after getting her female friend away from him, Owens began yelling at Issiaka Namoko. The impression which DJ had was that Owens was apparently upset with Namoko because he had said hello to Owens' girlfriend, LB. DJ stated that Owens was a very jealous man. At that point, DJ heard Owens say to Namoko, "I'm going to get you too".

In his statement to police, Issiaka Namoko explained how Owens demanded his wallet, saying "give me a cigarette and your wallet". Instead, Namoko took two steps, attempting to walk away when Owens said to him, "Don't try it...I'm talking to you fool". Namoko further explained that, "The next thing that I knew, pow, he just attacks me". Namoko was first struck with a gun. Then Owens said: "Can you hear me now or do you want me to blow your brains out?" At that point, Owens changed the gun over to his other hand and started punching Namoko. Owens had three other associates with him, including a man in a red Hawaiian shirt, who may have been the same man Owens assaulted minutes before his attack on Namoko. After Owens started punching Namoko, the four of them knocked him down and kicked him several times. Mr. Namoko heard one of them say, "Nigger, he's got a nice watch too". It was at that point that Namoko saw two of Owens' associates. Additionally, off to his left was Owens' girlfriend, LB. It was the girlfriend who Namoko said took all of his money, along with his watch and his necklace. Trying to end the confrontation, Namoko said to Owens, "you got what you want, just let me go". In response, he heard someone say, "Oh no, not like that". Owens' girlfriend then said, "You have to finish him baby", to which Owens responded, "Baby don't worry, you know I won't start nothing I can't finish".

It was at that point that the cab for which Mr. Namoko had called arrived. In Namoko's words, "the cab driver saved my life". According to Namoko, Owens immediately went on the offensive with the cab driver, saying something like "what the fuck you want, motherfucker ... get the fuck out of here ... don't act the fool ...", while turning his body and hiding the gun from the taxi driver's view. Namoko then realized that Owens was distracted and no longer looking directly at him. As he described it, "I know as soon as the cab driver goes, I'm gone [killed] too ... so I start running".

Although he was bleeding and running down the middle of Colfax Avenue, trying to stop cars and asking for help, Mr. Namoko could not get anyone to stop for him. It was then that he saw the police car and ran toward it. As Mr. Namoko describes it:

...and he's chasing me ... he's walking behind me saying if I talk [to the police] 'I'm gonna kill those motherfuckers and kill you ... I'm going to kill both of you ... there's no way you're going to get out of here' ...

Mr. Namoko made it to the police car and talked to the officers. He watched Owens closely as he explained the situation to Corporal Wyatt and Officer Miller. As soon as Namoko pointed Owens out to the officers, he saw Owens put the gun under his shirt. He was very careful to tell the officer that Owens had a gun. After Corporal Wyatt got out of the police car to confront Owens, Namoko heard the officer say "let me see your hands ... put your hands where I can see them". Owens' response, according to Namoko, was to say "I don't give a shit ... Don't talk to me". As soon as Corporal Wyatt got closer to him, Owens started running towards Logan Street. Mr. Namoko ran behind the officer, continuing to tell Corporal Wyatt that the man had a gun. During the pursuit, Namoko clearly heard Corporal Wyatt repeatedly order Owens to show his hands. Owens and Corporal Wyatt then went around the corner. Just as Mr. Namoko was going around the corner himself, he heard one shot.

Arriving at the scene within seconds of the shot, Mr. Namoko was immediately handcuffed by another officer until they could establish that he was the victim of the armed robbery. However, before he was handcuffed, Namoko saw that the man the officer shot, Harrison Owens, was the same man who beat, robbed and threatened to kill him and the two police officers shortly before.

Corporal Wyatt's and Officer Miller's descriptions of the incident closely parallel those of Mr. Namoko. Corporal Wyatt explained what happened after they turned off Logan Street onto East Colfax, saying:

And immediately, um, there was a black male on the north of, north side of the street who comes running out in the street waving his arms around. He was a black male with a white shirt. Uh, some blood on the front of the shirt that I could see, and, and he was bleeding from the mouth like he'd been assaulted. And, uh, he came to my side of the car and, uh, I rolled down the window and he said he'd just been assaulted and robbed ... his wallet was taken. And he pointed across the street to the south curb, and that the two suspects were there and he described them as black ... one was a black male with a, um, red T-shirt, and one was a black male with a white, white shirt.

And, uh, as I was getting out of the car to contact them that's when he said the, the black male in the white shirt had a gun. And I confirmed again which one's got the gun, and he pointed and said the guy in the white shirt.

Later in his interview, Corporal Wyatt further explained the initial contact with Mr. Namoko. He described how Namoko's "frantic behavior" of running out into the middle of the street flagging the officers down with both arms waving made clear that Namoko recognized them as police officers and needed their help. In Corporal Wyatt's words:

... [Mr. Namoko] was obviously injured. And then he's describing a, a serious crime to me which is he's just been assaulted. He's, uh, claiming he's been robbed and the person that robbed him has a weapon ... and it's specifically a gun ... he said a gun.

This information, which was consistent with what Officer Miller observed, made clear to both officers that this was a dangerous situation. When Officer Miller looked over at the man who was described as having the gun, he saw that man walking eastbound on Colfax Avenue toward Logan Street looking back at the officer in the police car. What captured his attention was the fact that the man had both of his hands under his shirt. As Corporal Wyatt got out of the police car, Officer Miller heard him say, "Police, stop".

According to Wyatt's statement, he jumped out of the car and went around the back of it to confront Owens. He did this for two reasons: First, because Owens was the more immediate threat given that he was armed; and second, because Corporal Wyatt had learned earlier that Denver Police had been looking for a large African-American male with dreadlocks, who was committing armed robberies in the neighborhood. With Mr. Namoko's identification of Owens as his armed assailant and the Department report in mind, Corporal Wyatt believed that Owens was armed and highly dangerous. As a result, when he approached Owens, Corporal Wyatt drew his gun, pointed it at Owens and yelled "get down". At that time, Corporal Wyatt saw that Owens was actually holding something with his right hand in his baggy shirt.

Despite these commands, Owens started walking faster towards Logan Street and actually started running as Corporal Wyatt got close to him. With his gun in his right hand, Corporal Wyatt ran after Owens and radioed in that he was in a foot chase with an armed party southbound on Logan in the 1400 block. Officer Miller saw them both turn down Logan Street. As described by Corporal Wyatt:

Um, as I was running after him on the ... down Logan, uh, I yelled at him, police, stop, let me see your hands, all that. He wasn't doing any of that. His hands were still not visible to me. He was either holding on to something or doing something with his waistband. Um, I stay right behind him as I'm chasing him down Logan. We got to about mid-block ... there's a parking lot on the right hand side. He made a, a turn around a great big tree that's there.

As numerous witnesses, including Owens' own acquaintances and residents in the neighborhood confirmed, during this short chase, Corporal Wyatt repeatedly yelled, "Police", "Stop" and "Show me your hands". Despite these orders, Owens kept his hands hidden. Nonetheless, it was clear that he was holding onto something or

doing something with his waistband. It wasn't until Owens turned around the tree described above that Corporal Wyatt could see both the butt of a gun and that Owens had his hand on it. Corporal Wyatt emphasized that he could see the gun clearly because of the contrast between the dark gun and the white shirt which Owens was wearing. The Corporal explained what happened next:

And as he made that turn I could see what he, his hand was on and that was a, a handgun in his waistband. I could see the butt of the, the gun. Um, I also went around that big tree. I never lost sight of him. And just as I got right around that tree, uh, he had the gun in his right hand and he was, uh, moving it towards the right, um like he was pointing it back towards me. And, uh, so I immediately thought he was going to shoot in my direction or shoot at me ... so I thought I had no other choice than to, uh, to fire my, my handgun, which I did do. I fired once, and he immediately fell to the ground and, uh, the gun fell out of his hand and fell right out in front of him.

Without time to sight his weapon and while he was still moving, Corporal Wyatt simply pointed his weapon at Owens and fired a single shot. The Corporal described pointing his gun at Owens' body and firing. When Owens immediately fell, face down, his gun fell to the ground near his outstretched right arm and hand. Corporal Wyatt only fired once and Owens died as a result of the single gunshot wound. Corporal Wyatt detailed the confrontation further in his interview describing how he saw the gun fully in Owens hand and saw Owens turn his upper body, his shoulder and arm to the right back towards the Corporal. It was only at that point that Corporal Wyatt fired one round, despite having his gun out during the entire foot chase. In his own words, Corporal Wyatt explained:

The reason I fired is because I, I thought for sure he was going to shoot me. [I stopped firing] Because he, he fell and was no longer a threat because the gun fell out in front of him, um, quite actually a distance in front of him. Uh, once he went down, I believe I continued forward to, um, within a few, f-...maybe five/six feet of him and held my gun out. Because at that point I, I didn't know if he had another gun or ... or a weapon. [and] Wait, waited for, um, Officer Miller to show up. Because I was- ... I was not going to holster my gun to handcuff him ... considering he's had one gun ... you've got one gun; you might have two guns or some other weapon.

At the time of Corporal Wyatt's interview, the autopsy on Harrison Owens had not been completed. Corporal Wyatt did not have access to the autopsy findings when he described how Owens was turned back to the right towards the Corporal with the gun in his hand when Corporal Wyatt fired. Nonetheless, the autopsy showed a wound track that was consistent with Owens' right arm being behind him, as described by Corporal Wyatt, when the bullet struck. Because of Owens' position, with his arm outstretched behind him as he was turning to the right, Corporal Wyatt's bullet hit Owens on the right side of the back near the shoulder blade. The angle of entry was approximately 45 degrees.

The Denver Police Department routinely tape records radio transmissions between police dispatchers and officers on the street. The dispatch tapes from the pursuit clearly record Corporal Wyatt screaming, "Drop it", before he calls in "shots fired". Additionally, as noted above, numerous neighbors and citizens in the area confirmed that Corporal Wyatt identified himself as a police officer, gave commands to "drop the gun" and to "show your hands".

Other Witness Summaries:

Numerous people in the area saw or heard parts of this incident. Many saw the beginning of the chase and described Corporal Wyatt approaching Harrison Owens, while giving Owens commands to "freeze" and "show his hands". Others heard the conclusion to the chase and Corporal Wyatt's commands to "drop the gun", as well as Corporal Wyatt's single shot. To a person, everyone who was able to hear all or parts of this incident confirmed both the commands given and Owens' refusal to comply with those commands. Many of these same people confirmed that only one shot was fired and that they saw a gun lying in front of Harrison Owens immediately after the shot was fired and before Corporal Wyatt got close to Owens. Below is a summary of some of those witnesses' statements.

SB:

SB, who was in the Congress Bar on Colfax Avenue and described herself as pretty intoxicated, explained coming out of the bar and seeing two guys "talking". One of the men then went up to a police car and she saw an officer get out of the car. She believes that she heard something about a gun which may have been "stop, give up the gun, put your hands where I can see them". She saw the officer and the other man run around the corner and noticed that the person the officer was chasing might have had long hair and a hat. She then heard a shot while she was still near the Red Room restaurant [320 East Colfax Avenue], but she did not see the actual shooting. As she went around the corner, SB heard one officer say, "he had a gun". She also heard the officer say, "show me your hands" as the black man who was shot was lying on the ground. SB also stated that she knew the guy who was shot and believed that she had seen him in the bar earlier that night.

WT:

WT was with Harrison Owens on the night of May 24th and early morning of May 25th, 2005. Although his statement was, at times, difficult to follow, WT made clear that he knew Owens well. WT explained that he saw Owens frequently and that he knew Owens carried a gun and made his money by selling crack. When he described the confrontation with Issiaka Namoko, WT said that a man matching Namoko's description came up to Owens and was "talking stuff" to Owens and Owens' wife. WT said that Owens was in a fight with this man and that Owens was holding his gun when he was hitting the man. WT described how Owens' wife ran after the man during this incident and that he saw Owens pull a gun which was "black" and "big" and point it at that man. WT also said that Owens punched the man "a whole bunch

of times" and that there was another individual standing with Owens when he was "beating up" the man.

In explaining how Namoko got away from Owens, WT confirmed that Namoko waved the police down. He then explained that the police officer got out of the car with his gun drawn and aimed it at Owens. According to WT, Owens still had his gun out and the police could see it. WT heard the police say "Drop it" and "Freeze, put your hands up", and explained that Owens didn't listen to the officer but ran instead. The police officer ran after Owens and WT thought that he heard two shots close together. When asked why Owens was running, WT explained that it was "cause he was scared, because he had his gun".

AH:

AH was a reluctant witness who initially told police that he did not know Harrison Owens, but later admitted that he did know him and was with him that night. AH denied seeing Owens fighting with anyone, although he also said he was walking behind Owens at a time when several other witnesses saw Owens fighting. Before he admitted knowing Owens, AH told police he was walking down the street behind the man who got shot. He described "the dude who got shot" as being "fucking big ... he was way bigger than me" and wearing a hat. AH said that there was "some talking going on ... that he heard loud talking ... but that all I seen was bodies, I didn't see any punches thrown". This was in conflict with the statements of Mr. Namoko and other independent witnesses.

While at the scene of the shooting, AH originally told the police that he had seen the shooting and that the "cops shot the man in the back". However, after being taken to Police Headquarters for a more detailed videotaped statement, AH admitted on at least six occasions that he had not witnessed the shooting. When asked directly if he saw the shooting, AH said "no" and also said, "No, I just heard it. I don't know who actually fired the shot or where - I just heard one shot". He placed himself on Colfax Avenue, between the end of the block and the alley by the Red Room restaurant and admitted that "I wasn't even at the street [Logan] yet when I heard the shot".

EB a.k.a. LS (EB/LS):

EB a.k.a. LS was the girlfriend of AH and was with Owens and his girlfriend that night. EB/LS confirmed the statements of Issiaka Namoko, DJ, Officer Miller and Corporal Wyatt in many significant areas. Although she was initially unwilling to provide her true identity and was not immediately forthcoming, she ultimately disclosed that she saw a man matching Mr. Namoko's description running into Colfax Avenue trying to get the attention of the police, just as the police crossed Logan. She stated that she saw the man who had flagged down the police point at Owens. At that time a police officer got out of the car with his gun in his hand. EB/LS thought the officer's gun was a Taser. She watched the officer move towards Owens who was not far from the corner of Logan Street and Colfax Avenue. EB/LS described running around the corner and having to take a breath, then hearing "just one gunshot". She was very clear that she did not see the shooting, but only heard it.

When asked if she heard any yelling, EB/LS replied: "all I heard was, um, was it, uh, was it lay down, that's all I heard, I think it was lay down, that's all I heard, and then I heard a firearm, and that's when I jumped up to see what was happening".

CP:

Another witness, CP, was very angry about being detained by officers when he was interviewed on videotape. CP said only that he saw the police pull over a man at the corner of Colfax Avenue and Logan Street. He also admitted that he saw one officer get out of the car and chase the man down the street. He saw the officer turn into the parking lot and shoot his gun. When asked if he could see what the man being chased was doing when the officer fired his gun, CP said, "No, 'cause he turned into the parking lot" and also said, "I couldn't see the other dude". Beyond giving that brief statement, CP was extremely uncooperative and refused to provide anything more to the detectives.

LB:

LB was the girlfriend of Harrison Owens. LB insisted that she was not with Owens in the bar or on the street. Rather, she stated that she simply went down to pick him up and that she was in her Bronco until she saw Owens run from the police and the police chase after him. According to her videotaped statement, LB was at Owens' mother's residence until Owens called her to pick him up near the Congress Bar. She stated that she arrived on the scene after the bar closed at 1:30 a.m. She further stated, contrary to the accounts of numerous other witnesses including Issiaka Namoko, that Owens never got in the car and she never got out of her car before the police were on the scene. She claimed that she did not see a fight and was in the area for only a few moments before the confrontation between Owens and the police.

Specifically, LB asserted that she drove up in her car to the Congress Bar to pick up Owens to take him home. When she arrived, he came over to her and told her he had to take care of something. As she watched from her Bronco, Owens took off running after the guy in the white shirt. Still in her Bronco, LB said that she saw the police pull up to the man in the white shirt. At that point she described seeing a police officer get out of his car with his gun pointed at her "husband", Owens. The officer yelled at her "husband", saying "stop, I have a gun, put your gun down". LB claims that it was not until that point - when she saw Owens start running and the police officer run after him - that she got out of her vehicle for the first time. LB heard the gunshot, but did not see the confrontation. After the gunshot, she ran southbound down the alley east of Logan Street on the south side of Colfax Avenue. This alley runs next to the parking lot where the shooting occurred. LB cut across the parking lot and saw Owens on the ground. Being quite upset, LB was screaming and crying. When she saw Issiaka Namoko in the parking lot, LB pushed him. Officers handcuffed her and put her in a police car, but she kicked out the window of the car. Officers then sat her on the ground until she could be transported to Police Headquarters.

LB subsequently confirmed that Harrison Owens had a gun, although she could not say if he had it with him that night. She explained that she had informed Owens of a fight which she and Owens' sister had with some men in a bar in this area two days earlier. According to her statement, Owens was "on a mission, he was mad" about this incident. LB said that Mr. Namoko was not one of the men with whom she had the altercation two days earlier and that she had never seen him before the time of the shooting.

SF:

A young couple driving down Colfax Avenue also confirmed Issiaka Namoko's recitation of how he was being beaten up by Harrison Owens and others, and how Mr. Namoko flagged down the police. SF said she and her boyfriend, DB, were going west on Colfax Avenue when they saw two men fighting on Grant Street on the south side of Colfax Avenue. As she watched, she realized that one man was getting beaten up – SF saw him get hit twice in the face and it was clear that this man, who matched the description of Issiaka Namoko, wasn't fighting back and kept trying to walk away. The guy hitting the man trying to walk away had longer curly hair and was cussing everybody. As she watched, the man who was getting beaten up flagged down the police and began talking to them. It was at this point that SF noticed that the assailant started running and the police officer got out of the police car and said: "Stop, freeze, get down". She watched them run around the corner and then heard one gun shot.

DB:

DB, SF's boyfriend, made a similar statement. He described seeing four men "fighting" in the 1500 block of Grant Street and explained that they pulled over to watch the fight. DB saw one of the people who he thought was fighting actually run up to a police car. DB could see that this man was saying something to the police. The other three men, who he thought had been in the "fight", then "took off running". DB clearly heard the police officer tell the man who had been fighting with the gentleman who approached the police car to "freeze". He explained that the police officer and the suspect were, in DB's estimation, maybe a quarter of a block apart. The police officer also said in a "real loud" voice to "freeze, show your hands". When the officer and the suspect went around the corner, DB lost sight of them. It was about five seconds later that DB heard the gunshot. Like his girlfriend, SF, he did not see the actual shooting incident.

TP:

TP was walking south down Logan Street in the 1400 block when he heard a loud voice which came from a uniformed policeman. The officer was chasing a black gentleman who had turned the corner from Colfax Avenue onto Logan Street. As he pursued the man, TP heard the officer saying "drop the gun, drop the gun or I'll shoot". The black gentleman continued to run and, in TP's words, "he was crouching as he ran, grabbing at his midsection" with both hands and not looking back. TP said the police officer was 15 to 20 feet behind the black man and said two to three times,

drop the gun or he'll shoot, but the black man did not reply. When the officer said drop the gun or he'll shoot, TP said that there was no mistaking the officer's voice as it was loud.

TP continued to watch and saw the man looking forward and grabbing "half and half" at his waistband and under his shirt. After he heard the shot, he saw that the man being followed by the police officer was "floored" and fell forward stomach first. The witness then heard what he thought was probably another police officer yelling at the black man to release the gun. TP described the lighting as being such that "you could see good". There were no obstructions and his position was about three quarters of a block away. TP did not see a gun and did not see the black man look back.

SG:

Among the residents in the area who heard Corporal Wyatt's commands and the subsequent shooting was SG, who lived in a near-by apartment building. SG was very clear that he heard loud commands to the effect of "stop or I'll shoot", "don't move or I'll shoot" before the shot was fired. After hearing the shot, SG looked out of his window and saw an officer about twenty feet to the east of the "guy on the ground", holding a gun on that "guy". He then heard the words "shots fired". When he leaned further out of his window, SG saw that a revolver was within five to six feet of the outstretched arm of the man who was shot. SG also stated that he could clearly see that the other person involved was a Denver Police officer who was in uniform.

EK:

EK, another resident of the neighborhood, heard a man's voice which was very, very loud and clear, saying at least one time, but "probably three times", "Drop the gun or I'll shoot". She also heard commands to "get down, get down". About five seconds later, EK heard a single shot. When she looked in the direction of the sound, she saw a person who she knew to be a Denver Police officer. She could clearly see his uniform, jacket, holster and gun. EK saw a man lying on his face in the parking lot who appeared to be shot in the back and who had a gun directly in front of him on the right. EK also heard a woman screaming after the shot was fired.

BH:

Nearby resident BH described being awakened by a very loud male voice, saying "Drop the gun or I'll shoot, Drop the gun or I'll shoot", then hearing the loud report of a firearm a second later. BH, who had military training, thought the weapon report was that of a 9 mm handgun. He explained that the whole event took only seconds and there were less than ten seconds between the two commands to "Drop the gun or I'll shoot", "Drop the gun or I'll shoot", and the shot. After the shot was fired, BH also heard screaming which he described as "not even words".

HC:

HC also lived in the area and heard a commotion followed by a command that was either "Stop, halt, police" or "Halt, stop, police". Seconds later he heard what he called "a pop" and then a woman screaming. He called the police as soon as he heard the shot. After finishing the call to the police, HC went with his wife to an area of his home where he could look directly into the parking lot where the incident occurred. HC saw what he described as an older, black male, who was being loaded onto a gurney. The man was 12 to 18 feet from the windows out of which he was looking. At the same time and in the same area, he also saw a revolver. He described it as having a blue barrel and a walnut grip. Upon reflection, HC thought that the entire incident only lasted a fraction of a second. He called the police as soon as he heard the shot. He explained in his interview that it was the "command" that caught his attention, as well as the sound of people running. HC believed that he had seen the man who was shot on prior occasions and that the man hung out at Colfax Avenue and Logan. Additionally, HC was familiar with Owens' girlfriend, saying that he may have had a confrontation with her previously. He described her as being verbally aggressive.

DL:

DL also lived with her husband in a building close to the parking lot in which the incident occurred. They saw the scene within two seconds of the sound of the shot. DL described seeing a big man who was face down on the ground with a gun near him and a uniformed officer still holding the man at gunpoint. The gun on the ground looked to be about four or five feet away from the man, and according to DL, "it looked like when he fell that it fell out in front of him". An officer stood watch over the gun, keeping a flashlight on it. The scene was, in DL's words, "pretty well lit". She pointed out that the parking lot had lights and there was a full moon. The officer checked on the man while she watched. She described seeing a woman in the parking lot who was leaping about and screaming. According to her, the police acted "very reasonably" with this woman who was "really acting crazy". She stated that the police had cuffed the woman and put her in a police car and that the woman kicked the window out of the car. [Based on previous statements, this woman was apparently Harrison Owens' girlfriend, LB.] In the course of her statement, DL emphasized something she and her husband had discussed:

One thing we do remember is that during this whole time they [the police] acted reasonably – with the lady, with the other person they arrested. Even with the victim, after we saw the gun, you know, he [the officer] wasn't going after him or anything. It was – they all seemed very reasonable in this whole situation. That's the one thing we really noticed when we were watching this.

JL:

DL's husband, JL, explained that he was awakened by what sounded like a really loud firecracker, followed by screaming. He immediately looked out of his window and saw "a whole bunch of cops coming" and a man lying on his stomach with blood on the upper right side of his back, which JL assumed, was a gunshot wound. The officer was telling this guy to "stay down, stay down"; he was barking orders to "stay down, get down". Other officers were yelling to check the area for casings and all the officers had their guns out. According to JL, one of the police officers said something like, "he was the one with the dreadlocks", or something to that effect. JL was very clear that he only heard one shot. He also explained that he saw "a six shooter revolver, with a brown handle" next to the man on the ground.

Like his wife, JL described the area as being well lighted by the lights on in the parking lot and the moonlight. JL said that he knew that the people he saw were police officers because he could see that they were all in marked cars, in dark blue uniforms with badges, and carrying guns. In his mind, there was no question that all the uniformed personnel could be clearly identified as police officers.

JL stated that he heard a lady screaming and saw that, after a while, she was handcuffed. He also saw another man [who was likely Mr. Namoko] get handcuffed and then have his cuffs removed.

As was the case with his wife, JL wanted to emphasize the way the police officers treated and handled the suspect who was shot. He explained that as he watched, the officers lifted the man over on his side and he thought that they checked his pulse. JL saw the suspect move a little bit, as he put it: "I think he moved his head, so he wasn't dead yet at that time". Then JL went on to say that the police "were gentle with him, they weren't unnecessarily rough with him or anything".

All of these witnesses, even those who were acquaintances or associates of Harrison Owens, provided independent corroboration, in whole or in part, of Corporal Wyatt's description of the events of the morning of May 25, 2005. In any case where different people see or hear things from different locations, there are invariably some differences in the reporting. What is remarkable in this case is the nearly uniform consistency of the reports made by both the civilian and law enforcement witnesses. The dispatch tape also confirms the Corporal's explanation, as does the autopsy report. What these facts conclusively demonstrate is that Harrison Owens was using drugs and alcohol, acting in an aggressive and violent manner before police arrived on the scene, that he had used a gun to commit serious felony offenses, that he completely refused to comply with any order given by Corporal Wyatt, that he attempted to escape arrest, and that he escalated the confrontation by pulling his fully loaded .44 caliber revolver and bringing it back towards Corporal Wyatt. As described by civilian witnesses, the police provided immediate medical treatment to Harrison Owens and were gentle and reasonable in their treatment of him after the threat he presented had been neutralized.

III. THE INVESTIGATIVE PROCESS

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The criminal investigation was completed and provided to the Independent Monitor for his review and consideration. The District Attorney's decision letter was released on October 28, 2005. As noted above, the District Attorney declined to file charges against the officer, concluding:

Numerous lay witnesses provided written and videotaped statements to investigators. While there were no eyewitnesses to the instant the shot was fired, there were witnesses who corroborate the chain of events that led to the final frames of the shooting and the events that immediately followed the shooting. This includes the possession of the gun by Owens during the aggravated robbery, felony menacing, and assault, the presence of the gun on the ground near Owens immediately after the shooting, and the repeated statements made by Corporal Wyatt during the foot chase and just prior to the shooting.

Under the facts of this case, Corporal Wyatt's conduct was justified under C.R.S. 18-1-707(2)(a) & (b)(1) & (2). We could not prove beyond a reasonable doubt that it was unreasonable for Corporal Wyatt to perceive that Owens was an imminent deadly threat to him at the instant he fired the single shot that killed Owens. Additionally, Owens had just committed a felony involving the use or threatened use of a deadly weapon and was attempting to escape by use of the deadly weapon. Therefore, no criminal charges are fileable against Corporal Wyatt for causing the death of Harrison Owens.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. The recommendations of the Use of Force Review Board are advisory in nature, and are not binding on Chief Whitman. The Use of Force Review Board met on November 16, 2005 and subsequently forwarded its recommendation to the Chief of Police, Gerald R. Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Independent Monitor, Chief Whitman concluded that there were no violations of Department rules or policies in this incident.

It should be noted that had Chief Whitman found a violation of Department rules or policies and recommended discipline in this case, the Denver City Charter mandates that the Manager of Safety, as the final authority involving discipline, independently review the investigation and "approve, modify or disapprove" the discipline recommended. The Charter does not mandate such an independent review if no discipline is recommended. However, this Manager of Safety's Office has instituted a practice of reviewing certain uses of force and issuing a public statement explaining why disciplinary action should or should not be taken.

Therefore, this Office subsequently reviewed the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including the officer statements, witness statements, diagrams, photographs and physical evidence reports. Additionally, this Office studied the policies in effect on the date of the shooting and relevant training materials and academy training methods. Consideration was given to the decisions of the Denver District Attorney and the Chief of Police, as well as the recommendations of the Use of Force Board and the Independent Monitor.

IV. ANALYSIS

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

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether there existed proof "beyond a reasonable doubt" that the officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Corporal Wyatt could not be found criminally liable unless there was proof beyond a reasonable doubt that at the moment he fired his weapon, it was unreasonable for him to believe that Harrison Owens presented a threat of serious bodily injury or death. Alternatively, there must have been proof to determine, beyond a reasonable doubt, that at the time he fired his weapon, Corporal Wyatt was unreasonable in his belief that Owens was attempting to escape with a gun or that Owens had committed a felony with his gun.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that this officer violated the Department's Use of Force Policy or any other rules and regulations that were in effect on the date of the shooting.

The Policy encompasses the criminal statute applied by the District Attorney's Office as it relates to the reasonableness of an officer's actions at the moment deadly force is used but also encompasses other aspects of tactics and training. The Policy indicates that officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. It acknowledges that officers may escalate or de-escalate the use of force as the situation progresses or circumstances change and may use tactical options such as warnings, verbal persuasion, disengagement, repositioning, cover, concealment, barriers, and other tactics as a preferable response to a confrontation, if reasonable under the circumstances.

As it relates to the sections of the Policy referencing the criminal statute, the Policy expressly incorporates C.R.S. § 18-1-707 which sets forth the legal framework under which a police officer is justified in using deadly physical force. The applicable language states, in part,

*“A peace officer is justified in using **deadly physical force** upon another person...when he reasonably believes that it is necessary:*

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or*
- b. To effect an arrest, or to prevent the escape from custody of a person whom he reasonably believes:*
 - 1.) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or*
 - 2.) Is attempting to escape by the use of a deadly weapon;*

In applying that section of the policy, the task in this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in believing that Harrison Owens was threatening him or her with deadly force. Alternatively, the evidence presented is also assessed to determine if it is more likely than not that a police officer attempting to arrest Owens would not have been reasonable in believing that Owens had committed or attempted to commit a felony with the use or threatened use of a deadly weapon or that he was trying to escape by the use of a deadly weapon.

In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of the administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when attempting to arrest Harrison Owens.

In making all of the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officer, as well as any reasonable inferences arising from that information; the visibility at the scene; the distances between the officer and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of the offenses believed to have been committed; the manner in which force or a weapon was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of this officer against what would be expected of an objectively reasonable police officer under similar circumstances.

A. The Reasonableness of the Officer's Tactics

In this case, Corporal Wyatt was stopped on the street by an injured, bleeding and clearly distraught citizen who had just been beaten and robbed at gunpoint. The armed assailant continued to follow the victim, even after the victim fled to the protection of the police. Additionally, Corporal Wyatt was aware that DPD was looking for a man matching Harrison Owens' description because that man was committing aggravated robberies in this same area. Corporal Wyatt got out of the car with his gun drawn and issued orders to Owens. However, Owens, stood his ground, refused to show his hands or get down and fled when Corporal Wyatt got closer.

From his first contact with Owens, Corporal Wyatt attempted to de-escalate the situation by giving Owens loud, clear and repeated commands to get down and show his hands. Had Owens complied with these commands, the confrontation would have ended peacefully at that point. However, Owens refused to obey these commands. Instead, Owens kept his hands hidden at his waistband. Throughout the short pursuit Corporal Wyatt continued to identify himself as the police and issued commands to Owens to "show [his] hands", to "stop", to "get down" and, ultimately, to "drop the gun".

When Owens refused to even acknowledge, let alone obey his commands, Corporal Wyatt was confronted by his sworn duties to protect the public and police officers, and to enforce the law and apprehend suspects. Corporal Wyatt properly chose to immediately pursue this armed and dangerous criminal to effect his arrest, prevent his escape, and prevent him from further harming others. Throughout the pursuit, Corporal Wyatt relayed his position and the situation by radio to dispatch, as is heard on the tape made that morning. Both the dispatch tape and witness accounts establish unequivocally that Corporal Wyatt continued to give Owens commands to de-escalate the confrontation. Once Harrison Owens began to turn his loaded .44 caliber revolver towards Corporal Wyatt, Owens eliminated any opportunity for the Corporal to de-escalate the situation or to employ any other tactic that would lessen the likelihood or necessity for deadly force. In light of the immediacy and lethality of the threat which Owens presented to both the public and Corporal Wyatt, this Office concludes that appropriate tactics were used in this case.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. It is clear from the radio traffic, the auditory witnesses to the shooting, the witnesses to the chase and Corporal Wyatt's statement that this shooting was precipitated by Harrison Owens. He committed felony offenses with the use of a deadly weapon when he beat, robbed and threatened to kill a citizen with a hand gun. He refused police commands to show his hands. He ran from the police when ordered to stop. He pulled his gun. He turned his weapon back toward Corporal Wyatt. Owens did not simply run from the police, he knowingly put Corporal Wyatt in fear of being shot. That he did so is borne out not only by the statements of witnesses and the dispatch tape, but also by the autopsy report. The autopsy demonstrates that Owens was turning back towards Corporal Wyatt with his right arm extended. After being shot,

Owens fell to the ground with that same arm in an outstretched position. A fully loaded, .44 caliber revolver was recovered within five feet of that outstretched right arm. It is evident that, when he fired his weapon, Corporal Wyatt had conclusive evidence that Owens was armed with a gun and that Owens had begun to turn the weapon back toward him. In the opinion of this Office, the perception of Corporal Wyatt that he and others in the vicinity were in imminent danger of deadly physical force was objectively reasonable under the circumstances.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the level of force used. Corporal Wyatt resorted to deadly physical force in firing his gun at Harrison Owens. As explained above, both state statutes and DPD policy have delineated the very limited situations in which police officers are justified in using deadly force. Such force is justified when an officer reasonably believes that the suspect or threat is using or will imminently use deadly physical force on the officer himself or a third person. Deadly physical force is also justified if an officer is trying to arrest a person who he reasonably believes committed or attempted to commit a felony by using or threatening to use a deadly weapon or who is attempting to escape by using a deadly weapon.

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions, which was certainly the case in this particular incident. In those circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on an "apparent necessity," not an "actual necessity." Similarly, an officer is not required or expected to wait until he is fired upon, or has a weapon pointed directly at him, in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The facts discussed in the preceding section (B.) are equally dispositive in determining whether the degree of force used against Harrison Owens was reasonable and justified. The actions of Owens created a situation in which Corporal

Wyatt believed that deadly physical force was imminent and his life was in danger. Corporal Wyatt explained that when Owens turned around a tree to run into a parking lot that he could see both the butt of a gun and that Owens had his hand on it. When the Corporal came around the same tree, Owens had the gun in his right hand and was moving it towards the right, "like he was pointing it back at me". Without time to sight his weapon and while he was still moving, Corporal Wyatt simply pointed his weapon at Owens and fired a single shot. The Corporal described pointing his gun at Owens' body and firing. When Owens immediately fell face down, his gun fell to the ground near his outstretched right arm and hand. Corporal Wyatt only fired once and Owens died as a result of the single gunshot wound. The facts and circumstances surrounding this event lead inescapably to the conclusion that the officer's belief that he was in imminent danger from deadly physical force was objectively reasonable.

In addition, Corporal Wyatt received information by verbal report from Issiaka Namoko and made personal observations of both Mr. Namoko's injuries and the aggressive and evasive actions of Harrison Owens. Corporal Wyatt also saw, first hand, that Owens was using his handgun in his attempt to escape. All of this information led Corporal Wyatt to the reasonable belief that Harrison Owens had committed numerous felonies (Aggravated Robbery, Felony Menacing, and Second Degree Assault)³ involving the use or threatened use of a deadly weapon and Owens was using that weapon to help him escape.

D. Findings

Therefore, this Office finds that Corporal Michael Wyatt acted in a reasonable and necessary manner in firing his weapon at Harrison Owens and that his use of deadly force was justified under the circumstances. The officer's actions were a direct and appropriate response to what he believed to be the imminent use of deadly physical force against him. Further, the officer's act of using deadly force was appropriate and reasonable because Owens had just committed felony offenses involving the use or threatened use of a deadly weapon and was attempting to escape by use of the deadly weapon. Given these findings, this Office concludes that Corporal Wyatt's actions were in compliance with the provisions of the Denver Police Department Use of Force Policy and all other Department rules and regulations.

³ The crimes mentioned above are defined as follows: Aggravated robbery, C.R.S. § 18-4-302(1)(a) and (b): A person who commits robbery, which is defined as knowingly taking anything of value from the presence or person of another by the use of force, threats, or intimidation, is guilty of aggravated robbery if, during the act of robbery or immediate flight therefrom he is armed with a deadly weapon with intent, if resisted, to kill, maim, or wound the person robbed or any other person; or he knowingly wounds or strikes the person robbed or any other person with a deadly weapon or by the use of force, threats, or intimidation with a deadly weapon he knowingly puts the person robbed or any other person in reasonable fear of death or bodily injury. Aggravated Robbery is a Class 3 Felony; Felony Menacing C.R.S. § 18-3-206(1)(a): A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a Class 5 Felony if committed by use of a deadly weapon; Second Degree Assault, C.R.S. § 18-3-203(1)(b): A person commits the crime of assault in the second degree if, with intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon. Second Degree Assault under this section is a Class 4 Felony.

It is important to note here that the finding that this shooting was justified would not have been different if it had been subsequently established that Issiaka Namoko was not the victim of a robbery but had been beaten and threatened by Harrison Owens for some other reason as was suggested by at least one other witness referenced earlier in this statement. Nor would the findings have been different had it been subsequently established that Owens was, in fact, not the "dreadlock" suspect police were seeking in connection with other robberies in the neighborhood.

This case must be viewed from the standpoint of the reasonably objective police officer given the totality of the circumstances and facts known to him and the reasonable inferences which could be drawn therefrom at the time the decision to use deadly force was reached. With this in mind, it is clear to this Office that Corporal Wyatt acted in accordance with Denver Police Department policy and training.

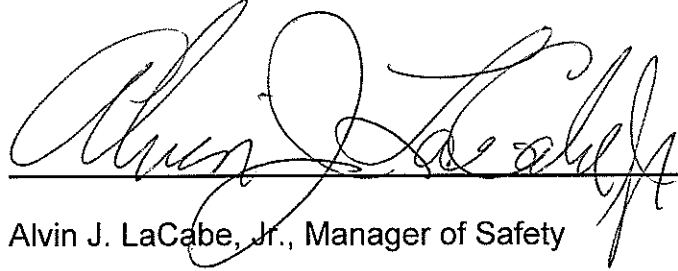
V. CONCLUSION

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

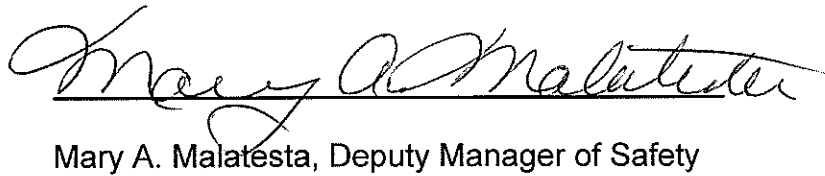
From his perspective, Corporal Wyatt was responding to the call of duty after a citizen who had been beaten, robbed at gunpoint and had his life threatened, did exactly what we ask the public to do – go to the police. When he saw the victim's assailant, Harrison Owens, Corporal Wyatt knew not only that Owens was armed, but also that he matched the description of a violent, armed criminal who had been robbing citizens in this neighborhood. By the accounts of his own acquaintances, Owens was behaving in a very aggressive manner on May 25, 2005. Even before Denver Police officers arrived on the scene, Owens had confronted a man in a red shirt who he assaulted and then pushed into the street in front of on-coming traffic. Owens had also followed a young woman down the street while yelling at her constantly – to the point where the woman's friends feared for her and tried to get her away from him. Owens' escalating aggressiveness rose even further when, without provocation, he chose to pull a gun on Issiaka Namoko, strike Mr. Namoko with that gun, and then proceed to beat, rob, and threaten to kill him. It is impossible to know what Harrison Owens was thinking when Mr. Namoko escaped and sought protection from Denver Police officers. However, the statements which Mr. Namoko heard from Owens, as Owens stalked him, are a good indication of Owens' intent and state of mind – "You're not going to get out of this ... I'm going to kill both those motherfuckers [meaning the two officers] and you..." are statements which are, at the least, extraordinarily aggressive and, at the worst, homicidal. For whatever reason, Owens acted as though he wanted to force increasingly violent confrontations on those with whom he came in contact on May 25, 2005. As noted above, Owens had a blood alcohol level of .161 and testing also showed that he had

both methamphetamine and cannabinoids in his system. Whether alcohol or drugs were the catalyst may never be known, but the inescapable conclusion of these facts is that Harrison Owens' escalating aggressiveness was the direct cause of this lethal confrontation.

In finding that the use of deadly physical force against Harrison Owens was indeed justified, this Office additionally notes that when faced with the situation in which he found himself on the morning of May 25, 2005, Corporal Michael Wyatt acted appropriately, professionally, and courageously in carrying out his duties as a Denver Police officer.



Alvin J. LaCabe, Jr., Manager of Safety



Mary A. Malatesta, Deputy Manager of Safety