

# Review of Officer-Involved Shooting of Mark Anthony Barmore

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## I. Introduction and Background

The authority given by the community to its police officers to use force to maintain order is a solemn responsibility. In keeping with this responsibility, when police officers use force, and in particular when that use of force results in death, the incident should be reviewed to determine whether the authority to use force was exercised appropriately.

The use of deadly force is generally reviewed from two perspectives: criminal and administrative. The criminal review assesses whether there are allegations or apparent evidence of criminal misconduct. Where there are such allegations or evidence, a criminal investigation and, where appropriate, prosecution is undertaken to resolve whether police actions were criminal. In this incident, the Illinois State Police conducted a criminal investigation and the Winnebago County State's Attorney presented the case to a grand jury. On December 23, 2009, the grand jury found that the use of deadly force by the involved officers did not violate Illinois criminal law.

This determination that the officers' actions were not criminal is significant, but it should be the beginning rather than the end of the inquiry of whether the officers' actions were justified or appropriate. Where an officer's use of deadly force is not criminal, it may nonetheless be unjustified under a non-criminal standard, pursuant to Supreme Court precedent requiring that any police use of force be objectively reasonable.<sup>1</sup> The use of deadly force may also be found to violate the police agency's policy, which may be more restrictive than state or federal law.

In addition, where an officer's use of deadly force is consistent with law and agency policy, that use of deadly force may nonetheless be found to have been avoidable or tactically unsound. This seeming contradiction results in large part from the fact that whether an officer's use of deadly force was objectively reasonable generally is assessed by looking at the facts and circumstances *at the moment the officer fired his weapon*. In some instances, even where an officer's use of deadly force was justified at the moment such force was used, the need for deadly force may have been avoided if the officer or others had employed appropriate tactics or followed policies and training in the moments leading up to the decision to use deadly force.<sup>2</sup>

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<sup>1</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>2</sup> See, e.g., RPD's 2009 Use of Force Training materials, explaining that force incidents should not be viewed as snapshots, but as holistic events. These training materials describe the following questions as ones that should be asked in use of force investigations:

\*Was the force justified at actual moment of force?

The review of whether a police use of deadly force was consistent with agency policy and whether there are any policy, training, or tactical concerns related to the incident, is generally called the “administrative” review or investigation of the incident. Independent Assessment & Monitoring, LLP (IAM) was retained by the City of Rockford to assist RPD’s administrative investigation of this incident by providing an independent assessment of the Rockford Police Department (RPD) officer-involved shooting that resulted in the death of Mark Anthony Barmore. Our independent assessment is not the administrative investigation of this incident; it is meant to assist the Rockford Police Department in conducting its own formal administrative investigation and resolution of this incident. Unlike many similar reviews, this request for an outside, independent assessment was voluntary and self-initiated by the City of Rockford, and was not imposed by a process required under local ordinance or court order.

To conduct our assessment, we undertook an extensive review and evaluation of available documents, spoke with police personnel and community members, and conducted a two-day on-site visit in Rockford. Documents reviewed included RPD policy and training materials, and RPD and Illinois State Police (ISP) investigative materials related to this case such as witness statements, laboratory and coroner reports, photographs, video tapes, and dispatch recordings. Individuals with whom we met included RPD police officers, sergeants, lieutenants and deputy chiefs, police union officials, ministers and other community members active in Rockford, and the Rockford Mayor, City Attorney, and Chief of Police. While on site we visited the scene of the officer-involved shooting and observed a community mediation, facilitated by the United States Department of Justice Community Relations Service. This community mediation was attended by community representatives of Rockford’s African-American and Latino communities, ministers, peace activists, police union members, a City alderwoman, the Chief of Police, the City Administrator, and the City Attorney.

We have received complete cooperation from the City of Rockford, Chief Epperson, and RPD members. Throughout our work and, in particular during our conversations with individuals in and outside the police department, we have been struck by the reasonableness and

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\*Did any action by officer or others unnecessarily precipitate use of force?

\*Did the officer comply with agency policies?

\*Would policy or procedure, additional training or equipment have potentially avoided necessity for force?

good faith exhibited by all stakeholders, including community members, union officials, police personnel, and city/police leadership.

This report encompasses our findings and recommendations based on the above-described review and evaluation. We worked closely with Michael Graham, retired Assistant Sheriff of the Los Angeles Sheriff's Department, in reaching these findings.<sup>3</sup> Assistant Sheriff Graham reviewed the entirety of the materials provided by the City of Rockford, and informed our evaluation of this incident through a series of discussions. In addition, he provided valuable comments on the draft of this report.

As noted above, our independent review is not meant to comprise the administrative investigation of this incident. Rather, it is meant to provide an independent assessment of the incident to assist the Rockford Police Department in conducting its formal administrative investigation and resolution of this incident. Towards this end, in Section II, below, we provide our evaluation of what the evidence shows about the shooting of Mark Anthony Barmore. In the interest of transparency, a critical component of police-community trust, we recommend that this report be made available to the public to the extent consistent with law. However, we recommend that the report remain confidential for a short period of time until any administrative interviews of officers and, to the extent possible, witnesses, have been conducted, to avoid compromising the integrity of the investigation.<sup>4</sup>

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<sup>3</sup> Michael Graham served with the Los Angeles Sheriff's Department for 32 years before retiring as an Assistant Sheriff. Among other activities, he has reviewed officer-involved shootings for a number of jurisdictions, and serves as a police practices expert for the Civil Rights Division of the United States Department of Justice in cases investigating patterns or practices of police misconduct.

<sup>4</sup> The two officers involved in this incident have not yet been interviewed as part of an administrative investigation of this incident. They did, however, provide their version of events in written statements they each provided to RPD a few days after the incident. When writing these statements the officers had the opportunity to consult with independent legal counsel, their union representatives and legal counsel, and anyone else, including each other. Subsequent to providing these written statements to the Rockford Police Department, the officers voluntarily met with the Illinois State Police investigators and had the opportunity to provide additional information. The officers provided little additional information to the Illinois State Police investigators, with one officer stating he could not recall anything about the incident beyond what was in his written statement. We have relied almost entirely on the officers' own statements in reaching our findings and conclusions regarding what transpired during this incident and the related policy, tactical, and training concerns. Nonetheless, in our view it is always appropriate to conduct an administrative interview of every involved officer when conducting the administrative investigation of an officer involved-shooting, and this incident is no exception. This administrative interview will provide the officers the opportunity to provide any additional information they would like and allows the agency to gain a more complete understanding of the incident by asking questions that are more probing and wide-ranging (i.e. questions meant to determine whether there are any tactical, training, or policy concerns the agency should address), than the questions that may have been asked during the initial criminal investigation interview of the officer.

In addition to assisting RPD in determining whether the uses of deadly force by Officers Stanton North and Oda Poole were consistent with RPD policy, this report documents our assessment of whether the actions of these officers and other RPD personnel immediately preceding, during, and after the incident were tactically sound and complied with RPD policies, practices, procedures and training, as well as current professional policing standards. Section III of this report provides this assessment. If RPD's administrative investigation concludes that any officer or employee action was tactically unsound or otherwise violated RPD policy or procedure, timely remediation is critical. Remediation may include re-training and, if appropriate, disciplinary action, up to and including termination, even if the use of deadly force itself is found to be in-policy.

Finally, our review of this incident provided insight about RPD policies and practices more generally. Section IV of this report provides our assessment of several critical RPD systems as they are currently implemented and makes recommendations for how they can be improved to better prevent and respond to serious uses of force, including officer-involved shootings.

## **II. What Happened: What the Evidence Tells Us About the Shooting of Mark Anthony Barmore<sup>5</sup>**

During the late morning on August 24, 2009, a woman called the Rockford Police Department alleging that Mark Anthony Barmore (Barmore) had threatened to slash her throat the previous night. According to dispatch records, the woman stated that Barmore was sleeping inside and that she would wait outside for police. Units were dispatched and arrived on scene between 10-15 minutes after the initial call but did not apprehend Barmore, reporting that he fled out the back door of the residence.<sup>6</sup>

A few minutes later, a Rockford Police dispatcher notified patrol units that a person called "Skip," fitting the description of the individual for whom police were looking, was seen walking on the Jefferson Street Bridge on Rockford's west side. Dispatch notified units that

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<sup>5</sup> The Crime Scene Reconstruction Report by the Illinois State Police Division of Forensic Services, Crime Scene Services Command also provides a narrative of this incident. The ISP report is generally quite good. Our narrative of the shooting and the events that immediately preceded and followed it provides some additional information and has a different emphasis than the ISP report, in keeping with our responsibility to explain and assess the policy, tactical, and training implications of this officer-involved shooting rather than determine whether the officers' actions may have been criminal in nature.

<sup>6</sup> Incident Recall of 08/24/09, Requested by Taylor, Brian (Incident Recall, 08/24/09), at 8.

“Skip” had apparently “pulled a knife out on a girl.”<sup>7</sup> Officers North and Poole were assigned to the squadrol wagon for Rockford’s west side.<sup>8</sup> The officers were dispatched to the Jefferson Street Bridge.<sup>9</sup>

Five minutes after Officers North and Poole were assigned to respond to the Jefferson Bridge, dispatch provided more detailed information about the person for whom they were searching, including his name, a more complete physical description, and that Barmore was wanted on a warrant and might still be armed with a knife.<sup>10</sup>

A few minutes after receiving this information, Officers North and Poole notified dispatch that they had Barmore in sight in the “Winnebago-Woodlawn” area.<sup>11</sup> The evidence shows that Officers North and Poole saw Barmore standing outside the House of Grace Church talking with a group of people. According to several of these individuals, Barmore, who came to the church occasionally, was relating trouble he was having, including an altercation with a girl where “he almost had to slit her throat,” resulting in the police coming after him.<sup>12</sup> Church members and officials were encouraging him to stay out of trouble and become involved in a boxing group the church was soon to begin.<sup>13</sup>

When Barmore saw Officers North and Poole and realized they were looking for him, he ran from the group and into the church, slipping in behind a church official who was entering the church.<sup>14</sup> Officer Poole got out of the police vehicle and pursued Barmore while Officer North drove the vehicle to the side of the building to prevent Barmore from fleeing through the side doors of the church.<sup>15</sup> The doors to the church were locked but Officer Poole was let into the church by a church official.<sup>16</sup> Two women in the church told Officer Poole that the man had

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<sup>7</sup> Incident Recall, 08/24/09, at 8.

<sup>8</sup> The squadrol is a vehicle specially designed and equipped to transport prisoners. RPD General Order 40.30, *Prisoner Transport*, section I.F.

<sup>9</sup> Incident Recall, 08/24/09, at 1.

<sup>10</sup> Incident Recall, 08/24/09, at 1; Audio CD 09-117891 *Disarming a PO 518 N. Court St. 911 Radio Traffic 8/24/09*.

<sup>11</sup> From Audio CD, 9-117891 504 S.2nd/Palm & Court Radio Traffic 12:25-12:45 8/24/09 (Audio Recording of Dispatch Communications, 08/24/09). Woodlawn Avenue terminates at North Winnebago Street at the corner of Winnebago Street and Palm Street, where The House of Grace Church is located.

<sup>12</sup> M.Brown 08/24/09 Statement to RPD.

<sup>13</sup> C.Rhodes 08/27/09 Statement to RPD; P.Coleman 08/24/09 Statement to RPD; M.Brown 08/24/09 Statement to RPD; S.Brown 08/24/09 Statement to RPD.

<sup>14</sup> P.Coleman 08/24/09 Statement to RPD.

<sup>15</sup> Poole Supplement Report 09-117891.46 (08/27/09)(Poole Supplement Report) at 3; North Supplement Report 09-117891.44 (08/26/09)(North Supplement Report) at 3.

<sup>16</sup> P.Coleman 08/24/09 Statement to RPD; M.Brown 08/24/09 Statement to RPD; Poole Supplement Report at 3.

gone downstairs and that there were children in the basement.<sup>17</sup> A young man held the door open for Officer North and also told him that Barmore had gone downstairs.<sup>18</sup>

Officer North went downstairs with Officer Poole right behind him.<sup>19</sup> According to Officer North's statement to RPD, he drew his service weapon just before entering the daycare room at the bottom of the basement stairs.<sup>20</sup> Officer Poole, according to his statement, had drawn his weapon while in the hallway of the church upstairs.<sup>21</sup> When Officers North and Poole entered the daycare room in the basement they immediately saw somewhere between 8 and 15 "about pre-school age" children, in their estimation, as well as "about two adults."<sup>22</sup>

At least one child in the daycare classroom in the basement saw Barmore enter the classroom and run past a counter through a small "kitchen" area into what was known as the "boiler room," or "closet." Officer North was the first one to enter the daycare room in the basement and asked, "Where did he go?" or words to that effect. One or more children and possibly the daycare teacher stated that he had gone into the closet. Sheila Brown, a Pastor of the House of Grace Church and proprietor of the day care, had followed the officers into the basement. Seeing officers' guns drawn, she and the day care teacher already in the room gathered the children into the corner of the classroom opposite of the boiler room and "shield[ed] the kids with [their] bodies."<sup>23</sup>

Upon being told that Barmore had entered the boiler room Officer North focused his attention on the boiler room door, which had a small window in the center at about Officer North's eye level.<sup>24</sup> Because it was dark inside the room, Officer North activated his gun-mounted flashlight.<sup>25</sup> Officer Poole entered the basement during this time and was right behind Officer North as Officer North immediately began to try to open the boiler room door.<sup>26</sup>

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<sup>17</sup> Poole Supplement Report at 3; M.Brown 08/24/09 Statement to RPD.

<sup>18</sup> North Supplement Report at 3-4; C.Hale 08/24/09 Statement to RPD; A.Hunter 08/24/09 Statement to RPD.

<sup>19</sup> North Supplement Report at 4.

<sup>20</sup> According to Officer North's later statement to the Illinois State Police, he drew his weapon and "cleared" the landing of the stairs. ISP Investigative Report: Interview of RPD Officer Stanton North (11/02/09) at 1. This would have been at the top of the stairs rather than at the bottom of the stairs, as is stated by Officer North's initial statement that he drew his weapon just prior to entering the daycare classroom as he was reaching the bottom of the stairs. North Supplement Report at 4.

<sup>21</sup> Poole Supplement Report at 3.

<sup>22</sup> North Supplement Report at 4; Poole Supplement Report at 4.

<sup>23</sup> B.Owens 08/24/09 Statement to RPD.

<sup>24</sup> North Supplement Report at 4.

<sup>25</sup> North Supplement Report at 4; S.Brown 08/24/09 Statement to RPD (officers had flashlights).

<sup>26</sup> North Supplement Report at 4; Poole Supplement Report at 4.



Officers North and Poole stated that they attempted to push open the boiler room door but that Barmore was pushing the door back “attempting to barricade the door closed,” in the words of Officer Poole.<sup>27</sup> Witness and officer statements report that the officers yelled at Barmore to come out of the closet, get down, and to put his hands up.<sup>28</sup> Officers North and Poole were able to open the door a few inches at first and then approximately twelve inches, all while Barmore was attempting to keep the door closed. Barmore reached out and grabbed a long white object, later determined to be a metal ballast cover, at which point Officers North and Poole were able to force open the door, pushing Barmore back into the boiler room and causing him to drop the ballast cover.<sup>29</sup> While the Officers’ statements are ambiguous on this point, it appears that the officers may actually have pursued Barmore into the boiler room.<sup>30</sup> The boiler room, which was 15 feet wide by approximately 33 feet long, was not illuminated, except by Officer North’s gun mounted flashlight and any light reaching it from the daycare classroom. According to officers’ statements, Officer North then stepped back to “extend the distance” between himself and Barmore.<sup>31</sup> Officer Poole held his pistol “in a close quarters combat style hold” close to his chest and remained either inside or at the doorway of the boiler room very close to Barmore.<sup>32</sup> According to the officers’ statements, the reason for maintaining this close proximity to Barmore was to keep Barmore from retreating back into the boiler room from where he might “get away” and take hostages or otherwise cause harm.<sup>33</sup>

Officers Poole and North state that Officer Poole was very close to Barmore and Barmore was able to reach out and grab Officer Poole’s service weapon by the barrel.<sup>34</sup> Officer North

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<sup>27</sup> North Supplement Report at 4; Poole Supplement Report at 4.

<sup>28</sup> M.Brown 08/24/09 Statement to RPD (“The officers must have seen the guy in the room and started yelling for him to come out.”); C. Hale 08/24/09 Statement to RPD (“I then heard both officers yelling in very loud voices saying, ‘get down, get down.’ I clearly heard them say this about ten times.”); S.Brown 08/24/09 Statement to RPD (“I could hear the officers yelling in the boiler rom for the guy to come out but did not see them.”); A. Hunter 08/24/09 Statement to RPD (“The police had their guns out and pointed at the black guy and were yelling, ‘Put your hands up!’ I heard the officers yelling this at least three times.”)

<sup>29</sup> North Supplement Report at 4.

<sup>30</sup> Pozzi Supplement Report 09-117891.24 (08/25/09)(recounting information received from North on scene: “He further advised that *Officer Poole was slightly ahead of him in the closet* and at this time the suspect lunged for Officer Poole grabbing a hold of the front of his gun.” Emphasis added.)

<sup>31</sup> North Supplement Report at 5.

<sup>32</sup> North Supplement Report at 5.

<sup>33</sup> North Supplement Report at 4: “Knowing we could not back off due to the potential danger to the children, we both pushed harder on the door.”; Poole Supplement Report at 4, “I did not want to give Barmore an opportunity to get away from us and create a hostage situation or harm one of the children.”

<sup>34</sup> North Supplement Report at 5 (“It now appeared to me the suspect was going to try and close the door on us. Officer Poole reached his left arm out, either to push him back or grab onto him. As Officer Poole had hold of his shirt, I recall the suspect using his right hand, grabbing onto Officer[] Poole’s left wrist area.”; Poole Supplement

indicates that Barmore first reached for Officer Poole's service weapon with one hand, then with two.<sup>35</sup> Officer Poole states that Barmore immediately "lunged" for his weapon with "both hands."<sup>36</sup> In either event, both officers report that very quickly both Officer Poole and Barmore had both hands on Officer Poole's gun: Barmore with both hands on the barrel of the gun and Officer Poole with one hand on the gun grip and one hand over Barmore's hands. Officer Poole and Barmore struggled over the gun while "within inches" of each other and with the gun at chest level.<sup>37</sup>

Officer Poole reported that he believed that Barmore was struggling to disarm him and that if Barmore were to succeed Barmore might use the weapon against one of the officers. Officer Poole reported that when he was able to push the barrel of the weapon towards Barmore he pulled the trigger and saw the bullet strike Barmore in the neck. Officer Poole reported that after being shot Barmore moved back and then forward again, maintaining his hold on the gun. Officer Poole and Barmore continued to struggle, falling against a sink with their backs to Officer North. Officer Poole reported that he heard Officer North discharge his weapon at which point he was able to pull his gun away from Barmore. Officer Poole reported he then saw Barmore fall "against the sink and then fall to the floor landing on his back." Officer Poole reported that Officer North then broadcast over the police radio a call for officer assistance and medical attention for Barmore. At this point, according to Officer Poole, he yelled to the daycare teachers to take the children from the room.<sup>38</sup>

Officer North reported that once he saw that Officer Poole and Barmore were struggling over Officer Poole's gun, he "instantly realized this had now turned into a life or death situation for Officer Poole, myself and possibly the children in the room if Barmore was allowed to get Officers (*sic*) Poole's pistol."<sup>39</sup> Officer North reported that as he waited for Officer Poole to get out of his line of fire he heard Officer Poole's gun discharge. Officer North reported that he did not know who had fired the gun, who had been hit, or who was in control of the gun. Officer North reported that as Barmore's right rear side faced him, he aimed at Barmore's back and fired

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Report at 4 ("Barmore stepped out from behind the door and immediately lunged forward and grabbed my service weapon.").

<sup>35</sup> North Supplement Report at 5.

<sup>36</sup> Poole Supplement Report at 4.

<sup>37</sup> Poole Supplement Report at 4.

<sup>38</sup> Poole Supplement Report at 4.

<sup>39</sup> North Supplement Report at 5.

what he believed to be three or four rounds, striking Barmore's back.<sup>40</sup> Officer North reports that Barmore fell to the floor, landing on his back, and that water from a pipe near the sink began spraying water. At this point, according to Officer North, "[t]here was now a lot of screaming from the children, who were now huddled in the far northeast corner of the room with the adults."<sup>41</sup> As additional officers arrived on the scene, Officers North and Poole "began yelling for the adult daycare workers to get the children out of there."<sup>42</sup> Officer Honzel, one of the first officers arriving on scene, placed handcuffs on Barmore without moving him.<sup>43</sup> Officer Honzel reported that Barmore was "breathing in very ragged breaths that had several seconds between them."<sup>44</sup>

Officers called for an ambulance within approximately one minute after shots were fired.<sup>45</sup> The church where the shooting occurred is across the street from a fire station and emergency personnel were able to respond within moments of being called. Emergency personnel reported finding Barmore on his back in the kitchen area, not moving, not breathing, and pulseless.<sup>46</sup> Emergency personnel asked permission from an officer to move Barmore from behind the counter to provide more room to work on him and were given permission by the officer to move Barmore.<sup>47</sup> Barmore was pronounced dead by emergency personnel while on the scene of the shooting.

The events described above, from the moment Officers North and Poole saw Barmore in front of the church to the time they discharged their weapons, shooting and killing him, occurred in just more than two minutes. The portion of the dispatch tape transcribed below documents the communications between Officers North and Poole and the RPD dispatcher approximately three minutes before, during and after the shooting.<sup>48</sup>

- 3:57 (3 minutes 57 seconds into 17 minute recording): *Officer North or Poole*: "Dispatch, would he be like Woodlawn-Winnebago area? I think we got him over here."
- 4:12: *Officer North or Poole*: "He just ducked into the House of Grace Church"

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<sup>40</sup> North Supplement Report at 5.

<sup>41</sup> North Supplement Report at 5.

<sup>42</sup>North Supplement Report at 4.

<sup>43</sup> North Supplement Report at 4 Poole Supplement Report at 5; Honzel Incident Report 09-117891.1 (08/24/09)(Honzel Incident Report) at 5.

<sup>44</sup> Honzel Incident Report at 5.

<sup>45</sup> North Supplement Report at 5; Audio Recording of Dispatch Communications, 08/24/09.

<sup>46</sup> RFD Incident Report at 2.

<sup>47</sup> RFD Incident Report at 2.

<sup>48</sup> Audio Recording of Dispatch Communications, 08/24/09.

- 4:32: *Officer North or Poole*: “Yeah I see him, he’s running inside the church!”
- 4:39: *Dispatcher*: “Okay, who are we chasing here and who’s at the church?”
- 4:46: *Officer North or Poole*: “It’s Barmore he’s got the green shirt on he’s in the House of Grace Church over here by Woodlawn!”
- 4:51: *Dispatcher*: “Units we’re chasing this Barmore subject he’s got the green shirt on he went into the church over on Woodlawn”
- (*other radio traffic*)
- 5:11: *Officer North or Poole*: “Dispatch he just went down the stairs here”
- (*other radio traffic*)
- 6:03: *Officer North or Poole*: “10-78 Shots fired!!! Suspect down!!!”
- 6:08: *Dispatcher*: “Units 10-78 Shots fired, suspect down! Give me your exact location 20.”
- 6:14: *Officer North or Poole*: “Basement!!! We’re in the Basement!!!”
- 6:55: *Officer North or Poole*: “Roll an ambo!!”
- 6:57: *Dispatcher*: “Ambo’s rolling.”

The above recording, alongside other evidence, shows that Barmore was fatally shot approximately two minutes after Officers North and Poole saw him outside the House of Grace Church, and less than one minute after they followed him down the stairs of the church into the basement.

The forensic evidence is consistent with Officer Poole’s and North’s assertion that Officer Poole and Barmore were in close proximity when Officer Poole’s weapon was fired, supporting the assertion that Officer Poole and Barmore were struggling over the weapon.<sup>49</sup> The nature of the injury to Barmore’s neck; the trajectory of the bullet; analysis of blood patterns; the presence of Barmore’s DNA inside the ejection port of Officer Poole’s gun; and the identification of DNA that may have been Poole’s underneath Barmore’s fingernails, are all evidence that Barmore was shot at close range. A witness statement that Barmore stated as he was running downstairs that “he was not going to go back,” or words to that effect, indicate a

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<sup>49</sup> We reviewed ISP laboratory and related reports, including the Winnebago County Coroner’s Report, and very generally summarize that forensic evidence here. A more detailed discussion is available in the ISP report of its Crime Scene Reconstruction of this incident.

mindset more likely to engage in struggle rather than surrender.<sup>50</sup> In addition, on-scene field notes by the sergeants who separately interviewed Officers North and Poole immediately after the shooting while still at the church indicate that the officers' first accounts of the events given minutes after the shooting were materially consistent with their later written Supplement Reports, provided to RPD a few days after the incident, that Barmore grabbed Officer Poole's gun and that a struggle over control of the gun ensued.<sup>51</sup> This evidence indicates that there was a struggle over Officer Poole's weapon and Officer Poole shot Barmore from close proximity (two feet or less) during this struggle.<sup>52</sup>

Officer Poole and Officer North stated that Barmore's hands were on Officer Poole's weapon during the struggle and at the moment the weapon was fired. Upon examination of Poole's weapon, a spent cartridge casing was located lodged in the chamber, consistent with interference with the weapon while being fired.<sup>53</sup> Gunshot residue (GSR) analysis did not reveal gunshot residue on Barmore's hands and Barmore's finger or hand prints were not found on Officer Poole's weapon.<sup>54</sup> The lack of gunshot residue or prints, however, does *not* preclude the possibility that Barmore's hands were on Officer Poole's weapon when it was fired; GSR is not always found even where it is known that a hand was on a weapon when it was fired.

The evidence is consistent with Officer North's statement that he shot Barmore because he heard a shot and did not know whether Officer Poole had been shot and did not know who had control of Officer Poole's weapon. The forensic evidence is consistent with Officer North's statement that he shot Barmore as Barmore's right rear side faced him, aiming at Barmore's back and firing what he believed to be three or four rounds, striking Barmore in the back.<sup>55</sup> Four cartridge casings from Officer North's gun were found. Three of the wounds to Barmore were

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<sup>50</sup> In Officer Schissel's field notes and report, he writes that M.Brown stated that Barmore said, "[t]hey ain't gonna get me." See also, M.Brown 08/24/09 Statement to RPD ("As he was running down the hallway he was saying he was not going to go back."); A.Hunter 08/24/09 Statement to RPD ("A police van drove through the parking lot and the guy said, 'No they're not going to get me today. They're not going to get me.'").

<sup>51</sup> Pozzi Field Notes-12:33p.m. (08/24/09); Jacobi Field Notes-12:40p.m. (08/24/09); Pozzi Supplement Report 09-117891.24 (08/25/09); Jacobi Supplement Report 09-117891.56 (08/28/09).

<sup>52</sup> There are no witness statements that can confirm that a struggle occurred. In a statement provided a few hours after the shooting, the daycare teacher in the basement at the time of the shooting stated that she "heard some struggling going on behind me." B.Owens 08/24/09 RPD Statement at 1. In a later statement to the ISP, Owens stated that she is certain that she did *not* hear a struggle. B.Owens 09/8/09 ISP statement. There is no indication whether there would have been any way for Ms. Owens to determine whether any "struggle" she heard was officers trying to open the boiler room door or a struggle over control of Officer Poole's weapon.

<sup>53</sup> 08/25/09 Report of Detective J. Bowman re: evidence tag # D33278.

<sup>54</sup> ISP 09/02/09 Laboratory Report Re: ISP GSR Kit administered to Mark Barmore; ISP 09/01/09 Laboratory Report re: .40 caliber Glock 2 handgun (Exhibit 16) print analysis.

<sup>55</sup> North Supplement Report at 4.

found to have come from Officer North's weapon; the fourth wound to Barmore was a neck wound consistent with a bullet fired from close range by Officer Poole's weapon. The trajectories of the wounds caused by bullets from Officer North's weapon, as well as analyses of blood patterns and other forensic evidence are consistent with Officer North's description of Barmore falling and turning as he was shot. The fourth bullet appears to have struck the water pipe of the sink in the "kitchen" area, resulting in water spraying the area until the water to the pipe was turned off.<sup>56</sup>

Other than possibly the children in the basement,<sup>57</sup> the only apparent civilian witness to Officer Poole's shooting of Barmore said in the written statement she gave to RPD the day of the incident that she saw Barmore come out of the boiler room with his hands up and saw one officer shoot Barmore from about four feet away. The witness states she then stepped out of the doorway and heard two or three additional gun shots after that.<sup>58</sup> This formal statement is consistent with the information she gave to an officer while still on-scene, moments after the shooting.<sup>59</sup> Later media reports quote this witness as stating that "[t]he officer shined his flashlight into the boiler room and told him to come out. He came out real slow with his hands up and his head down, and they shot him. He fell over into the sink. He tried to get back up, and they shot him again. A heavy-set officer was the one who was shooting him while he was on the ground."<sup>60</sup> The witness' *initial* statement to police is at odds with Officer North's and Poole's

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<sup>56</sup> See ISP report of Crime Scene Reconstruction for additional citations to laboratory/coroner reports and related materials documenting these findings; the underlying lab reports were also included in the ISP investigative file we reviewed.

<sup>57</sup> A number of school-aged children appear to have witnessed all or parts of this incident. RPD personnel spoke with some of these children just after this incident. Any comprehensive, reliable interviews of these children would have needed to have been conducted with the utmost sensitivity and by someone with training in this area. At this point, given the age of the children and the time that has passed since the incident, in our view interviews of the children would be of diminished reliability and would not justify the intrusion. The children, however, should be given opportunities to speak with trained counselors over the course of weeks or months to assist them in dealing with the effects of having witnessed this event.

<sup>58</sup> M.Brown Statement to RPD (08/24/09) at 2 ("The officers must have seen the guy in the room and started yelling for him to come out. I then saw the guy coming out of the door with his hands up. I saw both officers had moved back from the door. The officers were about four feet away from the guy and the heavy set officer shot the guy. I saw the guy fall onto the sink and I stepped out of the doorway at that time. I then heard two or three more gun shots."). This statement is signed by M. Brown and each paragraph is initialed. It should be noted that Officer Schissel's Supplement Report states that M.Brown told him that when Barmore came out of the boiler room "his head was down." Detective Lee states that M.Brown said "she thought the subject looked down and the heavy set officer then shot the subject and the subject fell onto the sink." This detail, that Barmore's head was down, is not included in M.Brown's formal statement but she is quoted as saying this in later reports to the media.

<sup>59</sup> Schissel Field Notes (no time) 08/24/09; Schissel Supplement Report, 09-117981.37 (08/26/09).

<sup>60</sup> *Witnesses of Shooting: No Struggle*, Rockford Register Star. Posted online August 24, 2009; updated August 27, 2009; last retrieved February 23, 2010.

version of events in some respects, and consistent with their version of events in other respects. Consistent with the forensic evidence, this witness saw an officer and Barmore facing each other and saw the officer fire one time. Also consistent with the evidence, this witness heard three shots after she backed away from the door. The witness' perception of the distance between the officer and Barmore may be consistent with the forensic evidence depending upon whether the witness' statement that officers were "about four feet" from Barmore meant four feet from person to person or from gun to person.<sup>61</sup> The forensic evidence regarding the trajectory of the initial shot does not appear to be consistent with this witness' statement. This witness' later reported statements to the media are significantly different than her initial statements to police and are not supported by the forensic evidence.

A second civilian witness, according to her written statement, stated that she did not see the shooting but that she heard four gunshots and then turned to see an officer with his gun pointed in a downward position.<sup>62</sup> Later media reports assert that this witness stated that officers "fired as many as eight rounds into Barmore including at least one shot into his head."<sup>63</sup> The forensic evidence is consistent with this witness' initial written statement but not with later media reports.

RPD policy authorizes an officer to use deadly force "to protect himself or others from what he reasonably believes to be an imminent threat of death or great bodily harm."<sup>64</sup> A preponderance of the currently available evidence indicates that *at the moment* deadly force was used by Officers North and Poole, the use of that force was consistent with RPD policy.<sup>65</sup> However, as detailed below, the actions of Officers North and Poole leading up to the shooting violated RPD policy and were not consistent with RPD training or sound tactics. The officers'

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<sup>61</sup> See, ISP Telephone Conversation Record 10/09/09 Conversation with T.Merchie ("No dispute between distances in officer and witness statements (both say 3-4 feet)").

<sup>62</sup> To her credit, this witness, Sheila Brown, the proprietor of the day care and a Pastor of the House of Grace Church, was overwhelmingly concerned with the well-being of the children in the daycare classroom. S.Brown Statement to RPD (08/24/09 at 2)("I mainly focused my attention on the kids and was telling them to look at my face, so they would not have to see the officers in the far corner. I could hear the officers yelling in the boiler room for the guy to come out but did not see them. I then heard about 4 gunshots and looked to see the heavy set officer was pointing his gun in a downward direction. I could not see the other officer, nor could I see the black male they were chasing. I was really focused on making sure the kids were safe and the whole incident is just kind of a blur."). This statement is signed by S. Brown and each paragraph is initialed.

<sup>63</sup> *Witnesses of Shooting: No Struggle*, Rockford Register Star. Posted online August 24, 2009; updated August 27, 2009; last retrieved February 23, 2010.

<sup>64</sup> RPD General Order 1.09, *Use of Force*, (August 2, 2006).

<sup>65</sup> As noted at the beginning of this report, we recommend that RPD conduct additional investigative steps before completing its determination of whether the use of deadly force in this incident was consistent with RPD policy.

handling of this incident placed the officers and numerous civilians, including young children, at increased risk of serious harm.

### **III. Assessment of Compliance with Policy, Training, and Sound Tactics**

This section of our report provides our assessment of whether the actions of RPD officers and employees immediately preceding, during, and after the incident were tactically sound and complied with RPD policies, training, and sound tactics. As discussed above, the actions of a RPD officer or other employee may be tactically unsound or otherwise violate RPD policy or procedure, even where the use of deadly force itself is found to be consistent with policy.

#### **A. Involved Officers Policy, Training, and Tactical Concerns**

Our review indicates that Officers North and Poole violated RPD policy and training and used poor tactics during this incident. Their actions presented unnecessary risks to officer safety and to the safety of others because, based upon the existing evidence, they did not act in accord with their training and with RPD policy. Our findings are based largely on the officers' own descriptions of their actions, alongside consideration of professional policing practices and RPD policy and training requirements. Our findings also take into account the difficulty of making split-second decisions in circumstances like those facing Officers North and Poole, and of fairly reviewing those decisions after the fact.

##### **1. Entry into the Church**

Upon observing Barmore flee into the church, Officers North and Poole immediately followed him, each pursuing Barmore into the building through separate entries. It appears that each officer was acting independently, with no coordination or communication with each other. There is no evidence that officers made an attempt to contain Barmore in the church or considered doing so. Officers did not establish a perimeter, summon back-up, evacuate the church, inquire about the number of potential occupants in the church, or ask about the layout of the building or basement, including the location of entries and exits. It appears that the officers split up and ran into the building after a potentially armed fleeing suspect without gathering any information about what to expect or coordinating with each other about what to do if they encountered him.



If it is the case that the officers did not quickly coordinate their actions with each other; know whether back up was on its way; or seek additional information about the unfolding scenario, then, in our view, officers violated fundamental tactics and placed themselves at a dangerous disadvantage from the moment they entered the church. Rapid gathering of readily available information and coordination should be routine in such encounters. **We recommend that RPD address questions about the officers' entry into the church during the administrative interview of each officer. We recommend further that RPD review its protocols and training related to building entry to ensure that its training and protocols sufficiently teach officers how to gather information and coordinate their efforts in such situations to maximize safety and effectiveness.**

## **2. Attempt to Immediately Remove Barmore from the Boiler Room/Failure to Evacuate Children and Day Care Workers**

Upon entering the basement Officers North and Poole were informed that Barmore was in the “closet,” also called the “boiler room.” The boiler room had only one mode of ingress or egress and there is no evidence that Officers North and Poole were concerned that there might be another exit from the boiler room beside the door they were covering. They did not, for example, ask anyone if there was another way to get out of the boiler room, even though they had asked where Barmore went. The fact that they were told the room was a “closet” further makes reasonable their belief that there was only one means of exit from the room.

As discussed in section II of this report, Officers North and Poole consistently state that Barmore went into the boiler room and was attempting to keep the door closed as the officers attempted to open it. By the officers' accounts, it was only after they had forced the door open and resisted Barmore's attempts to close the door again that Barmore engaged them.

When Barmore fled to the boiler room and refused to surrender to police, he was in effect barricading himself. RPD policy defines a “barricaded person” as, “[a]n armed or potentially armed person, having control of any location, whether fortified or not, who is refusing to comply with police demands for surrender.”<sup>66</sup> This incident also met RPD's definition of a “critical incident” and “unusual occurrence.”<sup>67</sup> Like most professional policing agencies, RPD has a

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<sup>66</sup> Rockford Police Department General Order 40.14, *Critical Incident and Unusual Occurrence Response*, (March 18, 2009) at 2.

<sup>67</sup> RPD policy defines a “critical incident” as: “A dangerous event similar to an unusual occurrence that can be controlled within the scope of Rockford Police Department resources.” An “unusual occurrence” is defined as:

number of policies that directly speak to such situations, and has provided training to officers on these policies.<sup>68</sup> RPD General Order 40.14 provides, among other things, that: “[o]fficers may want to avoid confrontation with people or hazardous situations in favor of isolation and containment until supervisor, trained tactical or special response and units arrive.”<sup>69</sup> The involved officers in this incident were both experienced officers and one had previously been a member of RPD’s SWAT unit.

There is no evidence that there was any exigency requiring immediate removal of Barmore from the boiler room. Barmore was not, for example, an “active shooter,” necessitating an immediate entry into the boiler room.<sup>70</sup> Instead, the facts known to the officers, alongside their training, required that the officers, upon learning that Barmore had barricaded himself inside the boiler room, take steps to ensure their own safety and the safety of others in the room before attempting to remove Barmore from the boiler room. This is particularly true here where the officers had reason to believe that Barmore might be armed with a knife or other weapon and where they knew there were many children in the room. There are a number of steps that would have been appropriate for the officers to take at this moment. Perhaps most pressing was the need to evacuate the children and day care workers from the room. We found it striking that none of the documentation related to the investigation of this incident references the pertinent fact that there is a clearly marked exit leading directly outside of the church from the basement next to where the children and their teachers were huddled during this incident. The existence of this exit means that the officers had the ability to have the teachers evacuate the children rapidly and safely from the basement via an exit that did not pass in front of the boiler room door. Similarly, the officers could have told the civilians that followed them down to the basement to go back up the stairs the way they had come. Despite these available opportunities, there is no evidence that the officers made any effort to evacuate any of the children or adults. Instead the

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“Any natural or man-made event, civil disturbance, critical incident or other occurrence of unusual or severe nature that causes or threatens to cause the loss of life or injury to citizens and/or severe damage to property.”

<sup>68</sup> Rockford Police Department General Order 40.14, *Critical Incident and Unusual Occurrence Response*, (March 18, 2009); Rockford Police Department General Order 40.15, *Hostage Negotiation. [Topics/Reference Barricaded Subject, Hostage, Negotiations, Sniper Fire Incidents]*, (March 18, 2009); Rockford Police Department General Order 40.16, *S.W.A.T. Unit*, (January 8, 2009).

<sup>69</sup> Rockford Police Department General Order 40.14, *Critical Incident and Unusual Occurrence Response*, (March 18, 2009), section III.D.

<sup>70</sup> Rockford Police Department training materials note, consistent with professional policing practices, that, “Immediate Action/Rapid Deployment Tactics *Are Not* a Substitute for Conventional Response Tactics to Barricaded Persons and/or Hostage Situations.” *Rockford Police Training Bureau Rapid Response Handout for 2003* (emphasis in the original).

officers chose to engage in a course of conduct that was extremely risky for themselves and these civilians.

Given the lack of any exigency requiring immediate removal of Barmore from the boiler room, sound tactics and training required that officers evacuate the children and teachers and then call and wait for the arrival of back up before attempting to extract a potentially armed barricaded suspect. Had the officers waited, arriving on-scene supervisors may have decided to deploy all or part of RPD's SWAT unit. Other potential options included use of RPD's canine units; deployment of OC Spray or the use of an electronic control weapon, or potential deployment of the Hostage Negotiation Team. Whether some or all of these options was appropriate would depend on the information available to officers and supervisors on scene.

The evidence does not support an assertion that the officers chose not to evacuate the children and wait for back up because they believed that Barmore might have a hostage in the boiler room.<sup>71</sup> The evidence indicates that Officers North and Poole had no reason to believe that anyone was in the boiler room with Barmore but rather had reason to believe that Barmore was alone in the room and was not holding anyone against his or her will. Numerous people in the church had assisted Officers North and Poole, including telling them that Barmore had entered the boiler room. Officers North and Poole would have had no reason to believe that this assistance would have been provided to them but that information that Barmore was holding someone against their will in the boiler room would not be conveyed. Nor does it appear that North or Poole in fact believed that Barmore might be holding someone against his or her will in the boiler room, regardless of the reasonableness of this belief. North turned on his gun-mounted flashlight and did not see anyone in the room besides Barmore. Neither North nor Poole asked anyone whether Barmore had entered the boiler room alone; whether he had taken anyone with him into the boiler room; or whether there was anyone in the boiler room with him. Had they any subjective belief that Barmore may have had someone with him in the boiler room, it is reasonable to believe that they would have taken these steps and asked one or all of these questions, just as they had asked initially asked where Barmore went. Moreover, if Barmore had taken a hostage, the actions taken by officers would have been inconsistent with sound tactics, agency policy and training, and would have likely heightened the danger to the hostage.

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<sup>71</sup> According to Officer North's statement, upon initially approaching the boiler room, "we did not know if there was a child or another adult held against their will in this room." North Supplement Report at 4.

Sound tactics and training do not support the assertion that officers had to extract Barmore from the boiler room because of potential danger to the children if he were not immediately apprehended.<sup>72</sup> Professional police practices, consistent with RPD training and policy, have long recognized that a mobile suspect is generally a greater threat than a contained one.<sup>73</sup> As discussed above, there was no attempt to evacuate the children and others from the room prior to attempting to remove Barmore from the boiler room.

In some situations officers do not have the time to muster all available resources or to employ all the measures that maximize officer and civilian safety. In such situations, officers must make best tactical use of what they do have in the time they have to do it, however imperfect. During this incident, however, officers had nearly perfect containment of Barmore when he was inside the boiler room and could have isolated the threat posed by Barmore. Instead, this threat was needlessly escalated by the officers' decision to immediately extract Barmore from the boiler room.

Had the officers heeded the information available to them at the time of this incident, they would have recognized that they had the opportunity to very quickly evacuate the children and adults, wait for back up, and potentially employ other tactical options before attempting to apprehend Barmore. Officers North and Poole did not act consistently with sound tactics and RPD policy or training when they instead rushed to immediately remove Barmore from the boiler room. The officers shot and killed Barmore approximately one minute after following him down to the basement.

### **3. Decision to Close the Distance on a Potentially Armed Suspect**

The consequences of the officers' immediate attempt to remove Barmore from the boiler room were exacerbated by the tactics Officer Poole used in attempting the removal. Officer North reported that when the officers forced the door open Barmore dropped the ballast cover but refused to get on the ground. Officer North reported that "[w]ith the door now open and the suspect standing about three feet away from me, I took one step back to extend the distance between us. The room light was still off and the only sufficient illumination was from my pistol

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<sup>72</sup> Officer North asserts, "[k]nowing we could not back off due to the potential danger to the children, we both pushed harder on the door." North Supplement Report at 4.

<sup>73</sup> See, e.g. "Suspect(s) should not be allowed to become mobile unless a tactical advantage is gained." Rockford Police Department General Order 40.15 *Hostage Negotiation [Topics/Reference Barricaded Subject, Hostage, Negotiations, Sniper Fire Incidents]*, (March 18, 2009), at 3.

flashlight. It was difficult to see if he was holding any weapon, such as a knife.”<sup>74</sup> Officer North employed proper tactics in ensuring a safer distance between himself and a potentially armed suspect in a darkened room by stepping back. The distance Officer North created between himself and Barmore would have allowed Barmore to retreat and effectively contain himself. This would have placed officers at a tactical advantage, perhaps offering another opportunity to evacuate the classroom. According to Officer North’s statement, it appears that Barmore was in fact attempting to retreat into the boiler room and close the door: “[i]t now appeared to me the suspect was going to try and close the door on us.”<sup>75</sup> However, Officer Poole’s decision to close the distance between himself and Barmore prevented Barmore’s retreat. As stated by Officer North: “Officer Poole reached his left arm out, either to push [Barmore] back or grab onto him. As Officer Poole had hold of his shirt, I recall the suspect using his right hand, grabbing onto Officers (*sic*) Poole’s left wrist area. As this happened, Officer Poole and Barmore were in the doorway. I was still about 2-3 feet to the left rear of Officer Poole. I saw that Officer Poole had his pistol leveled, close to his own chest, in a close quarters combat style hold. Instantly, Barmore reached outward with his left hand, and grabbed the barrel of Officer Poole’s pistol.”<sup>76</sup> While Officer Poole’s description of the incident is less detailed than Officer North’s, his statement also makes clear that he did not maintain sufficient distance from Barmore given the circumstances: “Officer North and I ordered Barmore to come out from behind the door and show his hands. Barmore stepped out from behind the door and immediately lunged forward and grabbed my service weapon. I had the grip of the pistol and Barmore grabbed the barrel of the gun.”<sup>77</sup>

While it is sometimes unavoidable, there are inherent risks when an officer places him or herself close enough to a resisting suspect for the suspect to have the opportunity to disarm the officer. Pushing or grabbing an armed resisting suspect is a bad tactic. Doing so while holding a gun in one hand compounds the tactical error. The greater the distance between officers and

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<sup>74</sup> North Supplement Report at 5.

<sup>75</sup> North Supplement Report at 5.

<sup>76</sup> North Supplement Report at 5.

<sup>77</sup> Poole Supplement Report at 4. ISP investigators interviewed Officer Poole later and attempted to obtain a more detailed account of the incident but Poole was unable to describe the incident in greater detail than was recounted in his 8/27/09 RPD Supplement Report to RPD: “Poole was unable to break down his initial physical confrontation with Barmore in a step-by-step fashion. When asked by PITF to explain how it occurred, Poole simply stated that Barmore ‘grabbed his gun with both hands.’ PITF read a description given by Officer North . . . but Poole could still not recall the actual physical progression of the fight, other than as described in his statement.” See, ISP Investigative Report: Interview of RPD Officer Oda Poole (11/02/09).

suspects, the more time officers have to react to a suspect's actions. There are too many instances of officers or bystanders being seriously injured or killed when a suspect is able to disarm an officer, as easily could have happened in this incident if the officers' accounts of the incident are accurate. There is no evidence, including in the statements by Officers North and Poole, providing a legitimate rationale for Officer Poole's decision to employ this high-risk tactic in these circumstances.

The statements of Officer Poole and Officer North indicate that it was the actions of Officer Poole that precipitated the direct physical confrontation between Barmore and the officers. This close confrontation allowed Barmore the opportunity to take hold of Officer Poole's firearm. Once Barmore was able to take hold of Officer Poole's weapon, the decision to use deadly force was consistent with RPD policy.

#### **4. Additional Tactical/Policy Concerns**

##### *Lack of Intermediate Weapons*

In addition to their firearms, ammunition, and handcuffs, both officers were carrying OC spray. Officer Poole was carrying his ASP (expandable baton) but Officer North was not. Both officers were trained in OC Spray and ASPs and both intermediate weapons were mandatory weapons for RPD officers at the time of this incident. It is not possible to know for certain whether the use of an intermediate weapon would have been feasible during this incident. The facts indicate that it may have been. Officer North may have been able to use a baton to assist Officer Poole during his struggle with Barmore, if he had it available. There is no indication whether officers considered using available intermediate weapons or whether the decision to draw their firearms compromised their ability to use intermediate weapons. **We recommend that RPD investigate whether the involved officers considered using their available intermediate weapons and if they did consider these options why they chose not to use them. We further recommend that RPD determine why officers were not carrying all the intermediate weapons in which they were trained and take appropriate corrective action.**

##### *Lack of Protective Vests*

We were surprised to find that neither Officer Poole nor Officer North was wearing a protective vest at the time of this incident. Not wearing such critical protective gear unnecessarily increases the risk of harm faced by officers and may adversely impact their tactical

decision making. RPD policy “strongly encourage[s]” that sworn personnel assigned to field patrol or special unit duties wear their protective vest during their shift but does not require it.<sup>78</sup> Sworn personnel assigned to field patrol or special units are required to have a protective vest “readily available,” i.e. “accessible for immediate use by the officer in the field.” Sworn personnel participating in “pre-planned high-risk tactical situation[s],” which includes “high-risk felony warrant arrests,” are required to wear a protective vest. Officer Poole had previously been counseled by a supervisor about not wearing his protective vest. **We recommend that RPD policy be revised to require all officers to wear protective vests while on duty. We further recommend that RPD assess whether the involved officers in this incident had a protective vest readily available to them.**

#### Officer Supervision

All officers benefit from diligent and consistent supervision. However, RPD’s supervisory and shift structure makes it difficult to provide consistent supervision. According to RPD personnel, during a typical week, officers may be supervised by a different supervisor each work day, and thus may have as many as five different supervisors in a week. This makes it difficult to establish a close supervisory relationship and would seem to make consistency in supervision and performance evaluation virtually impossible. A lack of unity of command may also require a more narrow supervisory span of control, and may make it less likely that steps will be taken to remediate problems noted in performance evaluations. **We recommend that RPD evaluate its supervisory system and ensure that each officer is assigned to and actually works with a single, clearly identified supervisor.**

### **B. Non-Involved Officer Policy, Training and Tactical Concerns**

#### **1. Misdirection of Officers by Dispatch**

A review of the recording of communications between dispatch and officers during this incident indicates that the dispatcher did not hear when Officers North and Poole informed him of their location at the House of Grace Church and as a result directed officers to the wrong location. Some officers appeared to have heard the correct location but it appears others went to the wrong location or were delayed in their arrival to the scene of the shooting. It is not possible to determine whether an earlier arrival by officers on scene would have resulted in a better

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<sup>78</sup> See RPD General Order 40.12, *Police Patrol*, (September 18, 2009), section IV.B.

outcome. However, in general the consequences of directing officers to the wrong location are potentially disastrous for officers and civilians.

Below is a transcript of dispatch communications upon which we base our finding that the dispatcher bears responsibility for directing officers to the wrong location:

- 3:57 (three minutes 57 seconds into 17 minute recording): *Officer Poole or North:*  
“Dispatch would he be like Woodlawn-Winnebago area? I think we got him over here.”
- 4:12: *Officer Poole or North:* “He just ducked into the House of Grace Church”
- 4:32: *Officer Poole or North:* “Yeah I see him, he’s running inside the church!”
- 4:39: *Dispatcher:* “Okay, who are we chasing here and who’s at the church?”
- 4:46: *Officer Poole or North:* “It’s Barmore he’s got the green shirt on he’s in the House of Grace Church over here on by Woodlawn!”
- 4:51: *Dispatcher:* “Units we’re chasing this Barmore subject he’s got the green shirt on he went into the church over on Woodlawn”
- 5:02: *Unknown Officer:* “What church on Woodlawn? What’s the intersection?”
- 5:09: *Dispatcher:* “20 keep it coming.”
- 5:11: *Officer Poole or North:* “Dispatch he just went down the stairs here”
- 5:22: *Unknown Officer:* “Has he got an intersection?”
- 5:25: *Dispatcher:* “20 what’s your church your at there on Woodlawn?”
- 5:33: *Unknown Officer:* “Don’t they say Kilburn and First?”
- 5:38 *Unknown Officer:* “Probably St. Paul’s.”
- 5:40: *Unknown Officer:* “Robert 1’s pulling up.”
- 5:41: *Dispatcher:* “Robert 1’s pulling up St. Paul’s Church there at Kilburn and uh Locust is it?”
- 5:58: *Unidentified Officer:* “If it’s Grace that’d be on, uh, North Court.”
- 6:03: *Officer Poole North:* “10-78 Shots fired!!! Suspect down!!!”
- 6:08: *Dispatcher:* “Units 10-78 Shots fired, suspect down! Give me your exact location 20.”
- 6:14: *Officer Poole or North:* “Basement!!! We’re in the Basement!!!”
- 6:17: *Dispatcher:* “Unit’s in the basement. Hold traffic units. 10-78, Acorn and Kilburne.”



- 6:25: *Unidentified Officer*: “. . . not at, they’re not at St. Paul’s! They’re not at St. Paul’s!”
- 6:28: *Dispatcher*: “Alright, give me a correct location.”
- 6:33: *Unidentified Officer*: “The church is, the church um, it’s right across from the, fr- from fire station one.”
- 6:38: *Dispatcher*: “The church across from station one, units, on Woodlawn. The church across from station one on Woodlawn”
- 6:44: *Unidentified Officer*: “. . . church. House of Grace Church!”
- 6:46: *Dispatcher*: “It is House of Grace church on Woodlawn across from station one. Units hold traffic.”
- 6:55: *Officer North or Poole*: “Roll an ambo!!”
- 6:57: *Dispatcher*: “Ambo’s rolling.”
- 7:26: *Unidentified Officer*: “Patrol Sam 20, it’s going to be Palm and Court. Palm and Court.”
- 7:31: *Dispatcher*: “Units holding traffic for Palm and Court.”
- 7:53: *Unidentified Officer*: “Situation secure! Slow everybody else down! Supervisor, ID, the whole nine yards.”
- 8:00: *Dispatcher*: “Supervisors responding, ID responding, units slow it down. Situation secured at 12:35.”

**We recommend that RPD work with the Rockford Fire Department to evaluate the actions of the dispatcher during this incident and take the corrective action necessary to prevent similar confusion in the future.** We note that since the date of this incident Rockford has equipped its dispatch system and police squad cars with Global Position System (GPS) technology, enhancing a dispatcher’s ability to determine a squad car’s location.

## **2. Lack of Active Supervisory Involvement**

Our review of the available evidence, including the dispatch recordings, reveals a lack of supervision of Officers North and Poole during this incident. Once the supervisor became aware that Barmore had been seen in the area he supervised, the supervisor should have directed officers to ensure that the area was efficiently and effectively searched, and should have instructed officers on what to do if Barmore was found. In addition, one would have expected to

hear the supervisor on the radio once Officers North and Poole communicated that they had seen Barmore. Whenever feasible, when officers are involved in activity such as the active search and pursuit of a potentially armed suspect, a supervisor should make his or her presence known on the radio and provide a coordination, planning, and oversight role to the officers. RPD policy requires, for example, that the initial responding supervisor has certain responsibilities while in route to the scene of a critical incident. These responsibilities include advising units on the scene to provide updated information as the situation further develops or changes.<sup>79</sup> We are aware that there was a very short time period between the time when Officers North and Poole reported Barmore fleeing from them and the time they used deadly force against him. Nonetheless, this time period appears sufficient to have allowed the officers' supervisor to provide direction and perhaps slowed down the officers. We were unable to detect any supervisory participation in the events leading up to the shooting or any explanation why there was no supervisory involvement. **We recommend that RPD evaluate the actions of supervisors who were responsible for the involved personnel and/or geographic area in this incident. We recommend also that the Department determine whether its policies regarding officer and incident supervision are adequate to ensure proper supervision of personnel in routine and significant events.**

### **3. Immediate Investigatory Response to Shooting**

In reviewing this incident, we found that in most respects the immediate steps taken by RPD to investigate the shooting reflected solid practices that are consistent with RPD policy and professional policing standards.<sup>80</sup> Radio recordings reflect that RPD leadership ensured that investigators and evidence technicians rapidly responded to the scene of this incident to collect physical evidence and to identify and interview witnesses and potential witnesses to the incident. RPD leadership also ensured that the scene was secured very quickly and that neighborhood canvasses were conducted. On-scene supervisors were aware of the need to separate involved officers and other adult witnesses in order to obtain their independent accounts of the incident, and the documentation reflects that they did so. The involved officers provided immediate statements to on-scene supervisors and conducted walk-throughs of the scene with supervisors to

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<sup>79</sup> Rockford Police Department General Order 40.14, *Critical Incident and Unusual Occurrence Response*, (March 18, 2009), at III.F.1.

<sup>80</sup> See, e.g. General Order 1.11 *Support of Employees Involved in Critical Incidents* (August 13, 2008), which requires, among other things, that involved personnel provide preliminary information about the incident to the first supervisor that arrives on scene and a walk-through of the incident, accompanied by a union representative witness.

describe what transpired. Dozens of officers on scene were required to provide formal written supplement reports documenting what they saw and did while on site. Even officers' handwritten field notes were saved and included in the investigative file. As noted in Section II of this report, this documentation of officer and witness statements lent credibility to these initial statements. The rapid request for emergency medical personnel and obtaining documentation of their actions on scene was also consistent with professional practices.

Notwithstanding these positive measures, our review of this incident revealed a number of areas where RPD should change practice to significantly improve the availability of clear and reliable information when reviewing serious uses of force.

#### *Deadly Force Roll Out*

Professional policing practices require a comprehensive “roll out” of certain personnel to the scene of a use of deadly force, including all officer-involved shootings, even where no one was struck. Persons that are notified and, where the agency has authority, required to respond, include: homicide investigator (s) (or other criminal investigator); IAD/Professional Standards Bureau investigator (s) (or other administrative investigator); representative from the States' Attorney's Office (to focus on the potential criminal aspect of the incident); representative from the City Attorney's Office (to focus on civil liability aspects of the incident); and training personnel (to focus on policy and training considerations). The intent of a multi-disciplinary roll out is to help ensure that evidence is properly preserved and collected during the first critical minutes and hours after the use of deadly force; and to facilitate investigative objectivity and neutrality from the outset. While representatives of most if not all of these disciplines were on scene after the Barmore shooting, RPD had in place no policy or protocol that provided these individuals guidance on how to fulfill their roles in ensuring a comprehensive, objective investigation, or requirements for how to carry out their responsibilities. **We recommend that RPD revise policy and practice to provide notification of and response by representatives of RPD's Homicide/Violent Crimes Unit (or other designated criminal investigative entity); Office of Professional Standards (or other designated administrative investigative entity); State's Attorney's Office; City Attorney's Office; and Training Unit, to every high-risk incident, including all officer-involved shootings.**

### Officer Interviews

Officer North and Officer Poole were separated and each separately provided information about the incident to a supervisor while still on scene. Each officer also separately did a “walk-through” of the incident with a supervisor. This is good practice. However, much of the benefit of this immediate separation and walk-through was severely compromised because the officers’ written statements regarding the incident were not provided to RPD until days after the shooting, and neither officer was interviewed until months after the incident, and then only briefly. The lack of a same or even next day interview of officers by investigators made it impossible to quickly gain a more complete understanding of the incident. Investigators were unable to ask questions related to the shooting that may not have been addressed in the written statement or to follow up on statements to gain more clarity. The lack of a prompt interview also diminishes the perception of reliability and credibility of later statements and interviews. In this incident, the officers were interviewed over two months later by Illinois State Police but these interviews appear to have been quite limited and, because their focus was on criminal aspects of the incident, were not meant to address the tactical, policy, and training concerns that every deadly force review should address. **We recommend that, absent extenuating circumstances, RPD require that officers involved in a use of deadly force such as an officer-involved shooting be formally interviewed about the incident prior to going off-duty. These interviews should be audio and/or video recorded in their entirety with no off-tape pre-interviewing.** In some departments initial interviews are done by criminal investigators and only if the officer invokes his or her right not to self-incriminate will administrative investigators immediately interview the officer. In these departments, as long as officers provide a voluntary statement to criminal investigators, a separate administrative interview may not take place for days or weeks after the incident, if the need for clarifying information becomes apparent.

### Video Recorded Walk-Throughs & Contemporaneous Officer Photographs

As noted above, in keeping with best practices, Officers North and Poole provided separate walk-throughs of the scene of the officer-involved shooting before leaving the scene. This provided supervisors and investigators with the officers’ contemporaneous descriptions of what occurred, facilitating better evidence gathering and guiding their investigation in the critical first hours after an incident. To ensure that this invaluable information is permanently documented, such walk-throughs should be video recorded. **We recommend that RPD revise**

**policy and practice to require video recording of all scene walk-throughs by involved personnel.**

Similarly, photographs in the investigative file indicate that RPD took photographs of Officers North and Poole before the officers went off duty. The backdrop indicates that the photographs were taken at the police department and the officers and their uniforms appear neat and not disheveled. Thus, while the photographs indicate the uniforms and equipment the officers wore that day, it appears that they do not provide an accurate picture of how officers appeared just after the incident. Particularly given the facts of this case, where officers assert that a struggle occurred while a witness says there was no struggle, photographs that document officers' actual appearance just after the incident can be useful in an investigation. For example, such photographs may show signs of a struggle, e.g. shirts untucked, general disheveled appearance, and any injuries. **We recommend that RPD revise policy and practice to require, except where there are extenuating circumstances, photographs of personnel involved in serious use of force incidents be taken while the personnel are still on scene and reflecting their appearance at the end of the incident.**

*Recording Witness Interviews*

In all use of force investigations, particularly investigations of officer-involved shootings, it is essential that all witnesses be identified and interviewed promptly. Timely and comprehensive witness interviews are critical because they allow investigators to hear directly what individuals who witnessed or participated in an incident saw, heard, felt, thought, and did before the witnesses' perceptions are influenced, often unknowingly, by reports about the incident. When evaluated alongside physical evidence, witness interviews help investigators to understand what occurred from various perspectives and to build a chronological narrative of the incident. As noted above, in this incident, RPD personnel did a very good job in quickly identifying and interviewing witnesses to the incident, including canvassing the area to identify individuals who may have seen or heard all or any parts of the incident. However, RPD did not audiotape or videotape *any* of the witness interviews it conducted. According to RPD, it does not record interviews unless it is a suspect interview in a murder investigation, in which case the recording is required under state law. Professional policing standards require that all statements in officer-involved shooting cases be recorded. The best practice is to videotape the interviews.

No pre-interviewing should occur—recordings should capture interviews in their entirety from start to finish.

Recordings allow investigators to unambiguously document individuals' accounting of events in their own words and provide critical contextual information regarding demeanor, veracity, and competence. Such information is often difficult or impossible to discern in written interview summaries. Additionally, recordings allow agencies to prepare verbatim transcripts which assist in review of incidents and can provide powerful information for use in judicial proceedings. Recordings also help disprove allegations of unprofessionalism, coercion, or dishonesty in an agency's description of witness accounts. **We recommend that RPD require video recording of all statements in officer-involved shooting investigations.**

*Comprehensive Interviews by Designated Investigators*

In addition to recording all statements, it is critical that interviews of involved persons and witnesses are comprehensive and that attempts are made to clarify material ambiguities. As noted above, the number of interviews conducted in this case was extensive and in many ways the interview statements are quite good. However, some key witness interviews were not probing enough to resolve critical fact issues. For example, as noted above, the primary civilian witness to this incident gave an initial statement that was potentially consistent with the forensic evidence indicating that Barmore was shot at close range. This initial statement may also have been consistent with officers' versions of events, in contrast to later statements by this same witness. However, the initial interview of this witness did not adequately resolve key factual issues, such as how quickly Barmore was moving towards officers and how close the officers' weapon was to Barmore when it was fired. "Locking down" key details of this witness' initial statement was a key missed opportunity in this investigation.

It is often the case that the need for further probing is only evident after the completion of the interview and the gathering of more evidence, thus, the lack of adequate probing in witness interviews may be due at least in part to the fact that the Illinois State Police assumed authority over the investigation, cutting short investigative activity by RPD investigators, and that witnesses subsequently refused to be re-interviewed.<sup>81</sup> However, in this case, the need for follow-up questions, greater detail, and better documentation should have been apparent during

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<sup>81</sup> Many of the witnesses to this incident refused to provide statements to RPD or ISP after the day of the incident and RPD has been asked by an attorney representing several witnesses not to contact them.

the initial interview by RPD investigators in many of the interviews. In this case, multiple investigators and officers conducted witness interviews. When this occurs, absent well-timed, tight coordination between investigators, interviewers may not be aware of discrepancies between witness accounts that should be probed. Accordingly, the better practice is for one investigator to interview all witnesses. This allows for the investigator to identify and probe discrepancies as they arise. If the number of witnesses is too large for this to occur in a timely fashion, investigators should work closely with one another to determine whether there are any discrepancies that need to be pursued. **We recommend that, to the extent feasible, one investigator, or team of investigators, conduct all interviews in each case. Where this is not feasible, investigators should closely coordinate their interviews. We further recommend that RPD provide additional training to investigators and require them to ask follow-up questions to clarify discrepancies and ambiguities.**

*Use of Scene Diagrams and Photographs*

As is frequently the case, in this incident the identity of which officer fired which rounds and the precise location of officers, witnesses, and the subject, are of critical importance. In a number of instances, when documenting initial statements RPD investigators did not clarify vague statements made by witnesses regarding what they observed and/or their exact location when making such observations. For example, several witnesses described actions that were taken by a “heavy-set officer” but investigators do not appear to have asked questions or showed witnesses photographs to ensure accurate identification of the officer in question. Similarly, scene diagrams were not used or documented to the extent they should have been by investigators to assist involved officers and witnesses in pinpointing the location of witnesses and involved officers as the incident unfolded. **We recommend that investigators be required to routinely use and retain diagrams and photographs to assist involved personnel and witnesses in describing events and to document those descriptions.**

Collection of Evidence<sup>82</sup>

While the involved officers were required to give their weapons to investigators promptly, Officer Poole kept his holster for four days, until it was collected from him at his home. Particularly given the facts of this case, the officers' holsters should have been collected along with their weapons. RPD reports that officers involved in shootings have been allowed to keep their holsters because they are provided replacement guns when the firearms used during the officer-involved shooting are collected. RPD reports that going forward they will provide replacement holsters as well and ensure that holsters are collected before the officer leaves the scene. **We recommend that RPD revise policy and practice to require that holsters and other parts of the involved personnel's uniform with evidentiary value are collected before the involved personnel leaves the scene of the incident.**

RPD policy requires that an employee involved in a critical incident be allowed the opportunity to use a phone in private, both at the scene and at the police department.<sup>83</sup> Independent of this requirement, all cell phone records of involved officers covering the time just after the use of deadly force should be collected so that the Department can assure itself and the public that officers did not inappropriately converse with other involved officers or third-party intermediaries before providing their description of events to investigators. **We recommend that RPD revise policy and practice to require the collection and review of involved personnel cell phone records covering the time period after the use of deadly force incident before the involved personnel provide their descriptions of events to department investigators.**

We noted from radio recordings that a very large number of officers came to the crime scene. It is understandable that when officers hear a call for officer assistance, they feel compelled to respond, even where, as here, they are very quickly notified that the scene is secured and there is no need for their response. **We recommend that RPD take particular care in officer-involved shootings and other high-risk incidents to ensure tight control of**

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<sup>82</sup> The ISP Crime Scene Reconstruction Report notes other investigative oversights that impacted its investigation. For example, the report notes that there were no perpendicular photographs of blood stains on a basement counter, precluding measurement of the stains. ISP Crime Reconstruction Report at 24. This investigation was of course also impacted by officers and EMTs moving Barmore, first to handcuff him and check for vitals, then to provide medical care and assessment. Given the circumstances of this case (e.g. the small area in which Barmore apparently fell and water being sprayed from the broken water pipe) moving Barmore to a more central location in the basement appears appropriate.

<sup>83</sup> RPD General Order 1.11, *Support of Employees Involved in Critical Incidents* (August 13, 2008), section I. B.



**the scene to restrict the number of personnel allowed access in order to avoid disturbing evidence and to maintain the integrity of the scene.** It should be noted that we found no indication that evidence was disturbed in this incident and RPD reports that only essential personnel were allowed access to the basement.

#### **IV. Assessment of RPD Systems Related to Prevention of and Response to Officer-Involved Shootings and Other Serious Uses of Force**

During the course of reviewing this incident we learned about a number of RPD systems, including its process for reviewing serious uses of force; its system for accepting and investigating complaints of officer misconduct; and its “early warning” system. Most directly relevant to this incident is RPD’s system for reviewing serious uses of force, including officer involved shootings.

##### **A. RPD Policies and Practices for Reviewing Uses of Deadly Force**

As outlined at the beginning of this report, every use of deadly force should be reviewed not only from the perspective of whether it was criminal, but also whether the involved officers or others violated agency policies; and whether the incident otherwise raises tactical, policy, training, or equipment concerns. While the criminal investigation, including any grand jury process and prosecution, will investigate whether the use of force may have been criminal, the remainder of the questions should be addressed as part of the agency’s administrative review. There is currently no mechanism within RPD for investigating these “administrative” components of an officer-involved shooting. While RPD has a use of force review board that reviews officer-involved shootings, we found that this board as currently structured does not provide the level of review necessary to adequately serve officers, the police department, the City, or the community.

##### **1. Lack of Administrative Investigation of Officer-Involved Shootings**

When there is a critical incident such as an officer-involved shooting, each Deputy Chief is notified, along with the police chaplain, the police union president and union attorney.<sup>84</sup> We were told that the State’s attorney and City Attorney also routinely are notified and respond to

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<sup>84</sup> RPD General Order 1.11, *Support of Employees Involved in Critical Incident*, (August 13, 2008), section II.

the scene. Detectives from the Investigations Bureau conduct a walk-through of the scene with the involved officer and his/her union attorney and union representative.<sup>85</sup> RPD policy requires that the Incident Commander and any commander/supervisor of any special response unit prepare reports of the incident and forward to the Chief of Police for review. RPD policy further provides that the Chief may call for a review of the incident by the Department's Command Staff and/or may have a review conducted by the Firearms and Use of Force Review Board.<sup>86</sup> Beyond this, while RPD investigates, or, in this case, has an outside entity investigate, whether officers who have discharged their weapons have violated any criminal laws, RPD policies and procedures do not provide for the essential administrative investigation that should inform the non-criminal review of the incident.<sup>87</sup>

An administrative investigation of an officer-involved shooting assesses whether departmental policies and training were followed; whether there is a need to modify or implement new policies, training, or equipment; and whether officers' actions were tactically sound. When appropriately conducted, administrative investigations can have tremendous risk management benefits and have the potential to save officer and civilian lives. This is why police departments across the country have moved away from the "homicide only" model of investigating officer-involved shootings that RPD currently has in place. While homicide detectives are well-equipped to conduct criminal investigations, they generally have not been asked to assess officer-involved shootings from an administrative perspective and have not been trained to do so. Instead of using the "homicide only" model of investigating officer-involved shootings, police departments are using their Internal Affairs Division or Office of Professional Standards to conduct a separate, parallel investigation. Where parallel investigations are conducted, homicide investigators remain primarily responsible for the crime scene, conducting the criminal investigation, and taking voluntary statements from the involved officers. Internal Affairs investigators respond to the scene, have access to the evidence, may interview non-

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<sup>85</sup> RPD General Order 1.11, *Support of Employees Involved in Critical Incident*, (August 13, 2008), Appendix.

<sup>86</sup> RPD General Order 40.14, *Critical Incident and Unusual Occurrence Response*, (March 18, 2009), sections XI and XII.

<sup>87</sup> RPD policy does provide that where there are complaints of criminal activity by Department personnel, as well as violations of Department rules, regulations, General Orders, or policy, the investigation may be conducted concurrently as two separate investigations, one criminal investigation and another "non-criminal and disciplinary" in nature. See General Order 10.03, *Internal Investigations*, July 25, 2007, section V. As discussed below, RPD's current system for investigating civilian complaints of misconduct is currently insufficient to ensure the appropriate investigation of officer-involved shootings based on citizen complaints about the shooting. More importantly, administrative investigations of officer-involved shootings should be conducted for every officer-involved shooting, regardless of whether a complaint has been made or whether there is any indication of wrong-doing.

involved officers and civilian witnesses, and are responsible for assessing the policy, tactical, and training issues. In some systems, Internal Affairs may watch or listen to officer or witness interviews as they occur. A few larger agencies use highly-trained specialized teams to conduct both the criminal and administrative investigation of each officer-involved shooting.<sup>88</sup> **We recommend that RPD revise its use of deadly force investigation policies and protocols to require a prompt, separate, parallel administrative investigation of each officer-involved shooting, and require the preparation of a report documenting the findings of that investigation.** Staff from the Department's Office of Professional Standards (OPS) should be trained on how to conduct such investigations and should be notified anytime an officer-involved shooting (regardless of whether anyone was struck) or other high-risk incident (such as an in-custody death) occurs. Upon notification, OPS staff should respond to the scene, participate in the scene walk-through, and conduct a thorough investigation of training, policy, and tactical issues associated with each incident. The Department has reported that, in the interests of promoting transparency and objectivity, it is exploring the possibility of establishing a multi-jurisdictional, task force that would respond to investigate officer-involved shootings. However, this task force would conduct the criminal investigation and would not be responsible for conducting the administrative investigation of the incident.

## **2. Ineffective Use of Force Review Board Process**

Upon completion of the administrative investigation of each use of deadly force or other high-risk event, departments should carefully review the incident. This review should focus on whether personnel used proper tactics and otherwise acted in accordance with agency policies, procedures, and training. Where it is determined that they have not, prompt remedial action should be taken including re-training and, as appropriate, discipline up to and including termination. In addition to holding officers and supervisors accountable for their conduct, reviews of officer-involved shootings and other high-risk incidents should also be used as an opportunity to assess and improve policies, procedures, equipment, training, supervision, and

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<sup>88</sup> Regardless of the model that is used, agencies must be careful to avoid taking statements that violate officers' rights against self-incrimination. In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the U.S. Supreme Court held that when a government employer directs an employee to answer questions or else be terminated, the statement cannot be used in a criminal proceeding because it was taken in violation of the employee's right against self-incrimination. As we have discussed with RPD, RPD policies related to *Garrity* warnings are currently ambiguous and are being revised.

management. In many agencies this review relies on the administrative investigation of the incident and is conducted by a multi-disciplinary review “board.”

Consistent with professional policing standards, RPD has in place a “Use of Force Review Board” (Board) that is charged with reviewing all officer-involved shootings; uses of force that result in death or great bodily harm; and, at the discretion of the Chief of Police, other incidents, including incidents where officers have been seriously injured or disarmed.<sup>89</sup> These are all appropriate incidents for review by a Use of Force Review Board. According to RPD personnel, while the Board has existed on paper for several years, it was not used consistently until relatively recently. Of more immediate concern, deficiencies in the structure and functioning of the Board impede its ability to hold officers accountable or otherwise conduct meaningful reviews of serious uses of force.

According to policy, the purpose of RPD’s Use of Force Review Board is to provide an impartial review to determine whether policy, training, weapons or equipment issues should be addressed. While General Order 10.04 empowers the Board to make recommendations about policy revisions and training and equipment needs, it does not authorize or direct the Board to determine whether a shooting or other critical use of force *complied* with RPD policies and training; whether proper tactics were used; or whether the incident was properly supervised and investigated. Making these determinations should be a core function of the Use of Force Review Board. Based on the documents we were provided, notwithstanding this policy gap, in some cases, the Use of Force Review Board did make some of these determinations. However, they have not been made consistently and, as discussed, are not mandated by policy. **We recommend that RPD revise policy and practice to consistently *require* the Board to determine in each case whether the use of force complied with RPD policies and training; whether proper tactics were used; whether the actions of non-involved personnel complied with policy; and whether the incident was properly supervised and investigated.**

The members of RPD’s Use of Force Review Board include RPD’s three Deputy Chiefs; a sergeant appointed each year by the Chief; an officer selected by the involved officer; an officer selected by the Board Chairperson; and an observer appointed at the discretion of the President of the police union. Given what should be core functions of the Use of Force Review Board, i.e., holding personnel accountable and learning from the incident to improve future

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<sup>89</sup> RPD General Order 10.04, *Use of Force Review Board* (January 14, 2009).

operations, critical individuals are missing from the Board composition. **We recommend that RPD revise policy and practice to require that the Department's legal counsel and personnel from RPD's Office of Professional Standards and Training Unit be required participants in Use of Force Review Boards.** The participation of these individuals will help ensure that recommendations regarding policy, training, and tactical issues are considered and well-informed and will also assist the Department and City in identifying emerging patterns and legal and risk management issues.

Since RPD currently does not conduct administrative investigations of officer-involved shootings, the Use of Force Review Board convenes "as soon as practical" after completion of the criminal investigation of the incident, including presentment to the Grand Jury. A review of Use of Force Review Board documentation, alongside discussions with RPD personnel at various levels in the organization regarding the Board review process, reveals that the board review is based upon limited information (e.g., the involved officer's police report but not witness statements or other independent evidence) and is not sufficiently probing. Based on the documents we reviewed, the Board accepts as fact the officers' version of events without reference to other sources of information. This may be due in part to the unavailability of any administrative investigation or other independent, objective presentation of the facts upon which to base its findings. **We recommend that RPD policy and practice require that the administrative investigation report of an officer-involved shooting or other serious use of force be promptly completed and that the Use of Force Review Board use the administrative investigation report as the primary basis for its analyses and findings.**

The Board's apparent lack of probing analysis may also be due to the fact that the involved officer attends and participates in the Board, making it more difficult for managers to engage in candid conversation or be critical to an officer who was involved in what was likely a traumatic incident. **We recommend that RPD limit the participation of involved officers and supervisors in Use of Force Review Board proceedings. In particular, all involved officers and supervisors should be excluded from the Board's discussions and deliberations.**

The documents we reviewed indicated that the Board either did not always recognize or did not respond to poor or dangerous tactics that were apparent in the incidents reviewed. We noted a lack of sufficient documentation of why the Board found incidents in policy and of any tactical, training, or policy concerns that were apparent. In some instances, the incident

documentation we reviewed seemed to indicate that the officer's actions were inconsistent with policy or presented significant tactical, training, or policy, concerns, but the Board documentation indicated that the Board found the incident in policy and did not note any tactical, training, or policy concerns. To ensure that the Board's findings are supportable and as useful as possible to the agency, the documentation should clearly articulate why an incident was found in policy, especially where the facts of the incident raise concerns, and should document the Board's thorough and probing consideration of whether tactics were appropriate and whether the incident raised any policy or training concerns. **We recommend that RPD require that Use of Force Review Board members have the requisite training, experience, and temperament to conduct probing assessments. RPD should provide clear expectations to Board members about their responsibilities to identify and respond to policy deviations and training and tactical concerns and ensure that Board members fulfill those responsibilities.** In some instances, the Board did make training recommendations. However, there was documentation provided indicating whether the recommendations were approved or implemented. Absent a clear system for ensuring recommendations are carried out, in many Departments, such recommendations are implemented haphazardly if at all. **We recommend that RPD revise policy and practice to require the Use of Force Review Board to provide an explanation of its findings and recommendations in each case. We further recommend that RPD revise policy and practice to require documentation both of the approval or rejection of Board recommendations and of the implementation/completion of Board recommendations. We also recommend that RPD use the information that comes out of the Boards to develop and provide additional scenario-based training to officers. The training should include emphasis on pre-force tactics and decision-making, communication skills, and de-escalation techniques.** It is critical that this training and any other training provided by RPD be consistent with the Department's mission and values. Our review of training documents and our conversations with RPD officers, supervisors, and commanders, indicated that some training materials, as well as some individuals in key training positions, were not in-sync with the Department's stated values. For example, we observed at times an overemphasis on confrontation and a dismissive attitude regarding de-escalation techniques. **We recommend that the Department regularly evaluate all of its trainers, particularly its use of force, search and seizure, and other critical trainers, to ensure that they have the skills and**

**temperament necessary to provide training consistent with RPD's mission and values and remove any trainers who do not.**

## **B. Acceptance and Investigation of Complaints of Officer Misconduct**

Because RPD has in place no system for the routine administrative investigation of officer-involved shootings or other serious uses of force, the only mechanism for investigating these incidents from a perspective other than criminal is where there is a complaint of officer misconduct related to the incident. However, as this incident shows, RPD's system of complaint intake and investigation is inadequate. Countless individuals, including witnesses to the incident and family members of the decedent, have made clear allegations the officers in this incident committed misconduct. Yet RPD's complaint intake and investigation system, as currently structured, does not authorize an administrative investigation based on those complaints. This is because a complaint of misconduct that, if true, would warrant a suspension greater than three days or termination, must be made in writing and accompanied by a sworn affidavit.<sup>90</sup> Moreover, RPD will not accept formal written complaints more than thirty days after the complainant was provided with an Internal Discipline Complaint form unless the complaint involves a criminal violation or the complainant can show "good cause" for not filing the complaint within the specified time limit. RPD also has a two-tiered system of complaint investigation structured in a way that unnecessarily complicates the internal investigation process.<sup>91</sup>

Some RPD restrictions on filing complaints are required by the Illinois' Uniform Peace Officer's Disciplinary Act, while others are not. Collectively these restrictions appear to act as a significant impediment to the investigation of meritorious complaints and RPD's exercise of

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<sup>90</sup> RPD General Order 10.03, *Internal Investigations*, (July 25, 2007). While this policy requires that an investigation of a formal complaint *based on civilian complaints of misconduct* be accompanied by sworn affidavit, there are other mechanisms to investigate those allegations of misconduct. A supervisor or commander may initiate an informal inquiry that may result in a formal investigation; however this informal inquiry would be conducted by the subject officer's supervisor, rather than by RPD's Office of Professional Standards. Internal personnel may also file a formal complaint, including a sworn affidavit, to initiate an investigation.

<sup>91</sup> RPD has a separate investigative process depending upon whether the complaint is deemed "formal" or "informal." RPD policy does not define "informal complaint," but does set out some procedures for the investigation of such complaints. See RPD General Order 10.03, section IV. It appears that RPD's system is intended to allow complaints of less serious misconduct to be handled quickly and directly by the subject officer's supervisor, but our review of documents, onsite observations, and interviews with individuals inside and outside the Department indicate that the system is not functioning as intended. For example, pursuant to governing collective bargaining agreement, RPD's Office of Professional Standards, which investigates all formal complaints, is not allowed to investigate informal complaints, leaving all such investigations to the subject officer's supervisor.

effective police accountability. Moreover, our onsite observations and discussions indicated a number of additional obstacles to the effective intake of complaints and the initiation of misconduct investigations at RPD, such as difficulty obtaining complaint materials and received complaints not being properly forwarded for investigation.

The decision to initiate an investigation of alleged misconduct, and the extent of that investigation, should be based on the seriousness of the alleged misconduct and the steps required to resolve the allegation, rather than the format of the complaint, the identity of the complainant, or any other procedural obstacle. We are aware the RPD is working to improve its process of misconduct complaint intake and investigation. **We recommend that RPD revise policy and practice to remove obstacles to filing complaints of police misconduct and ensure that all non-frivolous allegations of misconduct are appropriately investigated.** A robust, transparent system of misconduct complaint intake and investigation is a critical factor in strengthening police-community relationships and effective risk management.

### **C. Early Warning System**

Consistent with professional policing practices, RPD recently implemented an early identification and intervention system. Use of such systems is becoming increasingly common as police departments seek to effectively gather and organize key data such as uses of force, misconduct complaints, and other information traditionally recorded in a variety of formats and locations. It is widely believed that better tracking of this information facilitates risk-management as well as consistency in performance evaluations, corrective actions, and other management decisions. While we did not conduct an in-depth or comprehensive review of RPD's early warning system, we have several recommendations for improving the system based upon our review of system records relating to Officers North and Poole.

RPD's system is called the, "Personnel Early Warning System (EWS)." According to General Order 30.04, *Personnel Early Warning System*, the system is a non-disciplinary system for the purpose of, "attempt[ing] to identify, evaluate and assist Department employees, sworn and civilians, who appear to exhibit signs of performance and/or stress related problems requiring intervention. The General Order requires the following data be captured in the Department's EWS: 1) all *formal* complaints of misconduct; 2) disciplinary action taken against employees without a formal complaint; 3) significant changes in performance evaluation scores



from the prior year; 4) being named as a respondent in a protective order; 5) at fault traffic crashes while driving a RPD vehicle; 6) vehicle pursuits; 7) uses of force causing or likely to cause death or great bodily harm; 8) use of a weapon not causing death or great bodily harm; and 9) uses of physical force resulting in injury requiring treatment at a medical facility. Because the system was only recently implemented and RPD chose not to enter pre-implementation data, EWS does not contain any data of events or incidents occurring before November 2008. While all systems must establish a clear start date, the better systems incorporate as much accurate historical data as feasible, particularly regarding serious uses of force and other significant performance data.

The data required to be included in EWS includes a number of important and appropriate areas. However, there are significant gaps in the use of force information being captured by the system. First, the system does not include uses of physical force such as punching, kicking, kneeling, or other physical force, unless it results in injuries requiring treatment at a medical facility. *All* force should be reported, closely monitored, included in EWS, and, in many instances, investigated, depending upon the level of force and whether there are discrepancies or complaints regarding the force used. Departmental supervisors should be alerted if officers are engaging in any type of force at unusual rates, compared to officers working similar assignments, or in circumstances that should have been handled without resorting to force. By not including all uses of force in the system, the EWS may be giving supervisors and managers a skewed and incomplete perspective on officer conduct resulting in missed opportunities to remediate any problems promptly.

In addition to a gap in the types of force captured by EWS, we are concerned about potential problems with the time lag between when an incident occurs and when the incident appears in the EWS system. We do not know whether this is a systemic problem but were concerned that the Barmore shooting did not appear on EWS reports for Officers North and Poole despite the fact that the reports were produced nearly two months after the shooting had occurred. **We recommend that RPD evaluate whether the delay in entering this officer-involved shooting into EWS was an anomaly and, if necessary, revise policy and practice to ensure that all officer-involved shootings and other uses of force are incorporated into EWS within a reasonably short time period of their occurrence.**

RPD's EWS policy does not establish any specific benchmarks for evaluating the data but does require a monthly review of EWS data by the Commander of the Department's Office of Professional Standards. Under the policy, if the Commander observes an "inordinate" number of reported incidents or "incidents increasing in severity," he is required to alert the Deputy Chief of Administrative Services to assess whether the employee may be in need of intervention. If intervention is warranted, the policy requires creation of a corrective action plan to modify the behavior.

Based upon our discussions with RPD personnel, the Department's actual practices go further than the policy in several key respects, including the types of data being captured in the system; the method of capturing the data; and the standards for reviewing the data. According to the Department, it is now including all complaints, formal and informal, in EWS. However, as discussed above, there are significant shortcomings in the manner in which misconduct complaints are received and forwarded. As a result, the complaint information included in EWS suffers from the same deficiencies as does the use of force information in EWS. RPD also reports that the Department's process for entering data into the system has become more automated than described in policy, no longer relying upon submission of manual forms as discussed in the policy. In addition, the Department is now using specific internal benchmarks and thresholds to assist it in evaluating the data. **We recommend that RPD revise policy and practice to ensure that all uses of force and all misconduct complaints, formal and informal, be included in EWS. We further recommend that RPD explore the feasibility of entering key historical data, such as officer-involved shootings, into the system in order to provide supervisors and managers ready access to more complete information regarding their personnel. We also recommend that RPD evaluate the internal benchmarks and thresholds it is using to determine whether officers who may be in need of intervention are being identified by the system, and that such interventions are occurring and being monitored for officer improvement.**

## V. Conclusion

The officer-involved shooting of Mark Anthony Barmore was a tragedy for his family and friends, and a searing event not only for the involved officers and witnesses, but for the entire Rockford community. The Rockford Police Department's willingness to analyze this

incident closely and transparently, and to learn from it in order to prevent similar incidents in the future, is encouraging. The community's willingness to participate in this process is particularly noteworthy. This partnership can help create a police culture that better recognizes that respect for individual rights is not a hindrance to successful crime fighting, but rather that respectful policing and effective policing go hand in hand. Throughout this review we observed reasonableness and good faith exhibited by all stakeholders, including community members, union officials, police personnel, and city/police leadership. We encourage these stakeholders to continue working together as the Rockford Police Department and community move forward together.

### **Summary of Recommendations**

- 1. We recommend that RPD address questions about the officers' entry into the church during the administrative interview of each officer. We recommend further that RPD review its protocols and training related to building entry to ensure that its training and protocols sufficiently teach officers how to gather information and coordinate their efforts in such situations to maximize safety and effectiveness.**
- 2. We recommend that RPD investigate whether the involved officers considered using their available intermediate weapons and if they did consider these options why they chose not to use them. We further recommend that RPD determine why officers were not carrying all the intermediate weapons in which they were trained and take appropriate corrective action.**
- 3. We recommend that RPD policy be revised to require all officers to wear protective vests while on duty. We further recommend that RPD assess whether the involved officers in this incident had a protective vest readily available to them.**
- 4. We recommend that RPD evaluate its supervisory system and ensure that each officer is assigned to and actually works with a single, clearly identified supervisor.**
- 5. We recommend that RPD work with the Rockford Fire Department to evaluate the actions of the dispatcher during this incident and take the corrective action necessary to prevent similar confusion in the future.**
- 6. We recommend that RPD evaluate the actions of supervisors who were responsible for the involved personnel and/or geographic area in this incident. We recommend also that the Department determine whether its policies regarding officer and incident supervision are adequate to ensure proper supervision of personnel in routine and significant events.**
- 7. We recommend that RPD revise policy and practice to provide notification of and response by representatives of RPD's Homicide/Violent Crimes Unit (or other**

**designated criminal investigative entity); Office of Professional Standards (or other designated administrative investigative entity); State's Attorney's Office; City Attorney's Office; and Training Unit, to every high-risk incident, including all officer-involved shootings.**

- 8. We recommend that, absent extenuating circumstances, RPD require that officers involved in a use of deadly force such as an officer-involved shooting be formally interviewed about the incident prior to going off-duty. These interviews should be audio and/or video recorded in their entirety with no off-tape pre-interviewing.**
- 9. We recommend that RPD revise policy and practice to require video recording of all scene walk-throughs by involved personnel.**
- 10. We recommend that RPD revise policy and practice to require, except where there are extenuating circumstances, photographs be taken of personnel involved in serious use of force incidents while the personnel are still on scene and reflecting their appearance at the end of the incident.**
- 11. We recommend that RPD require video recording of all statements in officer-involved shooting investigations.**
- 12. We recommend that, to the extent feasible, one investigator, or team of investigators, conduct all interviews in each case. Where this is not feasible, investigators should closely coordinate their interviews. We further recommend that RPD provide additional training to investigators and require them to ask follow-up questions to clarify discrepancies and ambiguities.**
- 13. We recommend that investigators be required to routinely use and retain diagrams and photographs to assist involved personnel and witnesses in describing events and to document those descriptions.**
- 14. We recommend that RPD revise policy and practice to require that holsters and other parts of the involved personnel's uniform with evidentiary value are collected before the involved personnel leaves the scene of the incident.**

- 15. We recommend that RPD revise policy and practice to require the collection and review of involved personnel cell phone records covering the time period after the use of deadly force incident before the involved personnel provide their descriptions of events to department investigators.**
- 16. We recommend that RPD take particular care in officer-involved shootings and other high-risk incidents to ensure tight control of the scene to restrict the number of personnel allowed access in order to avoid disturbing evidence and to maintain the integrity of the scene.**
- 17. We recommend that RPD revise its use of deadly force investigation policies and protocols to require a prompt, separate, parallel administrative investigation of each officer-involved shooting, and require the preparation of a report documenting the findings of that investigation.**
- 18. We recommend that RPD revise policy and practice to consistently *require* the Board to determine in each case whether the use of force complied with RPD policies and training; whether proper tactics were used; whether the actions of non-involved personnel complied with policy; and whether the incident was properly supervised and investigated.**
- 19. We recommend that RPD revise policy and practice to require that the Department's legal counsel and personnel from RPD's Office of Professional Standards and Training Unit be required participants in Use of Force Review Boards.**
- 20. We recommend that RPD policy and practice require that the administrative investigation report of an officer-involved shooting or other serious use of force be promptly completed and that the Use of Force Review Board use the administrative investigation report as the primary basis for its analyses and findings.**
- 21. We recommend that RPD limit the participation of involved officers and supervisors in Use of Force Review Board proceedings. In particular, all involved**

**officers and supervisors should be excluded from the Board's discussions and deliberations.**

- 22. We recommend that RPD require that Use of Force Review Board members have the requisite training, experience, and temperament to conduct probing assessments. RPD should provide clear expectations to Board members about their responsibilities to identify and respond to policy deviations and training and tactical concerns and ensure that Board members fulfill those responsibilities.**
- 23. We recommend that RPD revise policy and practice to require the Use of Force Review Board to provide an explanation of its findings and recommendations in each case. We further recommend that RPD revise policy and practice to require documentation both of the approval or rejection of Board recommendations and of the implementation/completion of Board recommendations. We also recommend that RPD use the information that comes out of the Boards to develop and provide additional scenario-based training to officers. The training should include emphasis on pre-force tactics and decision-making, communication skills, and de-escalation techniques.**
- 24. We recommend that the Department regularly evaluate all of its trainers, particularly its use of force, search and seizure, and other critical trainers, to ensure that they have the skills and temperament necessary to provide training consistent with RPD's mission and values and remove any trainers who do not.**
- 25. We recommend that RPD revise policy and practice to remove obstacles to filing complaints of police misconduct and ensure that all non-frivolous allegations of misconduct are appropriately investigated.**
- 26. We recommend that RPD evaluate whether the delay in entering this officer-involved shooting into EWS was an anomaly and, if necessary, revise policy and practice to ensure that all officer-involved shootings and other uses of force are incorporated into EWS within a reasonably short time period of their occurrence.**

**27. We recommend that RPD revise policy and practice to ensure that all uses of force and all misconduct complaints, formal and informal, be included in EWS. We further recommend that RPD explore the feasibility of entering key historical data, such as officer-involved shootings, into the system in order to provide supervisors and managers ready access to more complete information regarding their personnel. We also recommend that RPD evaluate the internal benchmarks and thresholds it is using to determine whether officers who may be in need of intervention are being identified by the system, and that such interventions are occurring and being monitored for officer improvement.**