



**REGULAR MEETING
MINUTES**
for
Wednesday, February 28, 2007
4:00 P.M. – 5th Floor Large Conference Room
and
5:30 P.M. - Art Pick Council Chambers
3900 Main Street, Riverside, CA

CASE REVIEW – 4:00 P.M.

Case Review Roll Call

Brewer	Davidson	Garcia	Brandriff	Ward	Pearcy	Corral	Castro	VACANT
✓	A	✓	✓	✓	✓	✓	✓	-----

✓ = Present A = Absent

Staff: Mario Lara, Interim CPRC Manager; Phoebe Sherron, Sr. Office Specialist

Public Comment

There was no public comment.

Closed Session – Case Reviews

Pursuant to Government Code Section 54957, the Commission adjourned to Closed Session at 4:03 p.m. to discuss issues pertaining to PUBLIC EMPLOYEE PERSONNEL MATTERS.

	<u>CPRC CASE NO.</u>	<u>IA CASE NO.</u>
1)	06-034	PC-06-06-008
2)	06-040	PC-06-07-016
3)	06-042	PC-06-07-021
4)	06-065	PC-06-11-052
5)	06-044	PC-06-08-027

The Commission recessed at 4:45 P.M. to reconvene in the Council Chambers.

OPEN SESSION – 5:30 P.M.

Audio for the following proceedings is available on the CPRC website:

www.riversideca.gov/cprc

Copies can also be obtained by calling the CPRC office at (951) 826-5509.

Vice-Chair Ward led in the Pledge of Allegiance. Vice-Chair Ward then asked Ms. Sherron to confirm commissioner attendance.

REGULAR MEETING – ROLL CALL

Brewer	Davidson	Garcia	Brandriff	Ward	Pearcy	Corral	Castro	VACANT
✓	A	✓	✓	✓	✓	✓	✓	-----

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STAFF: Mario Lara, Interim CPRC Manager
Phoebe Sherron, Sr. Office Specialist

Vice-Chair Ward advised the Commission and members of the public that Item 6 would be heard first and that remaining items would be taken in order.

Brown Officer-Involved Death Case

VICE-CHAIR WARD – At this time, we have a briefing from our investigator from Baker Street Group.

MR. GURNEY "BUTCH" WARNBERG – Good evening, ladies and gentlemen. Thank you. This is going to be the final summary report in the incident involving Lee Deante Brown who was contacted, shot, and killed by Riverside Police Department in April 3rd, 2006 in the area of 1910 University Avenue at the Welcome Inn of America.

Just by way of review, this report that's in front of you this evening will be...will supersede all other reports that are...that have been presented in this case. We've done actually a Summary Report, Part 1, to the Commission. This final report that supersedes that previous report is a compilation of both reports with the addition of some additional investigation that was conducted following Summary 1.

Just by way of review, the person that was shot in this case was a Riverside resident, African-American male by the name of Lee Deante Brown. He was 31 years old, divorced, father of two small children, with a moderate criminal record here locally and in the county.

The summary of events as they took place on that day are, essentially, that, um, Mr., uh...Mr. Brown lived in a residence in a garage with his fiancé on 4th Avenue here in Riverside, um, and in the early morning hours, sometime on April the 3rd, while they were asleep in the garage, Mr. Brown woke up and was going through some psychotic event. It frightened his fiancé to the point that she told him to leave and he left the residence sometime in the morning hours and his exact travels are unknown until he actually arrives at the Loma Vista Apartments sometime in the early afternoon.

Mr. Brown was on foot and, during that time, people began to notice some pretty bizarre behavior exhibited by Mr. Brown. This behavior included reports to the Police Department Dispatch Unit that

included such behavior as running in traffic, screaming, yelling, exposing himself, cursing, all types of odd behaviors. So police were dispatched to look for this individual. At about approximately 1:52 in the afternoon, Officer Paul Stucker was in the vicinity of the Welcome Inn at 1910 University Avenue. He was flagged down by a witness to this shooting, a fellow by the name of Kenneth Williams. Officer Stucker was directed to the parking lot at the Welcome Inn where Mr. Brown was seated on the ground sort of in the southwest corner of the parking lot. University Avenue runs east and west. The Welcome Inn actually is situated on the south side of University Avenue with the extremity of the parking lot actually butting up against University Avenue, which would be the north end of the parking lot.

So Officer Stucker was directed by Kenneth Williams to Mr. Brown, where he was seated over in the southwest corner and, at the same time, Mr. Williams gave Officer Stucker some commentary as...as to his conclusions as to what was wrong with Mr. Brown. He described some of his behavior and suggested to the officer that Mr. Brown was probably on a street drug he referred to as "water," which is street terminology for the drug PCP.

Officer Stucker parked his vehicle in the parking lot of the Welcome Inn and exited his car, actually motioned to Mr. Brown to step toward him at which time Mr. Brown retreated to a cubby hole in the uh, the southwest corner of the uh, of the parking lot. Attached to the report here, in the back on the appendages, are actually some diagrams of that parking lot and you can see from the diagram, in that southwest corner, right by Apartment 5...4, 5, and 6, there's a little cubby hole right there. The position of Officer Stucker's vehicle, sort of in the middle which is labeled on the diagram as Car No. 1, you can see from that angle, Officer Stucker temporarily lost sight of Mr. Brown when he retreated into this little cubby hole.

So Officer Stucker, essentially, went to his car, and because of the model of Taser that he carried, he didn't carry it on his belt with his equipment. He actually kept his Taser weapon on the front seat of his car. So he retrieved the Taser from the front seat of his car and then maneuvered and positioned himself, with the Taser, in a position where he could once again see where Mr. Brown was. He didn't know, at that point, if he had gone into an apartment or what exactly had happened.

But anyway, he repositioned himself and was able to see Mr. Brown, who had flattened himself out against the wall of that cubby hole, just standing with his face toward the wall in a...in a...in that ti...with his hands down to his side.

As Officer Stucker approached Mr. Brown, he began to give him verbal commands to reveal his hands, put his hands up in a position where he could see his hands. He orders him to put his hands on the wall. Mr. Brown, at this point, is non-compliant with Officer Stucker. He is talking incoherently, gibberish, using terminology, you know, about God and Jesus. He is repeatedly asking for "Mariah." He is saying things that are not very comprehensive.

When Officer Stucker realizes this, he activates his belt recorder and he points his Taser weapon at Mr. Brown and continues to give him orders as to what to do with his hands and how to comply with his orders. Mr. Brown is noncompliant. He's...he's talking incoherently and doesn't do what Officer Stucker orders him to do.

At some point in that contact, Mr. Brown actually turns away from the wall and takes a step toward Officer Stucker, who is approximately 10 feet away.

Yes, sir...

COMMISSIONER PEARCY – Just for clarification, do you mean Officer Ellefson?

No, Officer Stucker at this point, sir. Officer Ellefson hasn't arrived on the scene yet.

So as Officer Stucker is aiming his Taser at Mr. Brown, Mr. Brown turns, takes a step toward Officer Stucker, who perceives this movement as threatening and fires his Taser from approx...from a distance of approximately 10 feet. Both probes strike and make contact with uh, with Mr. Brown. The electrical shock provided by the Taser weapon is initiated as soon as the trigger is pulled and the darts are fired...lasts for five seconds. Mr. Brown stiffens, falls to the ground. One of the probes comes loose. Officer Stucker notices this and he is concerned and doesn't want to approach Mr. Brown with this loose Taser dart on the ground, really not knowing what this individual is going to do. Now Officer Stucker is still by himself at this point, although he had radioed for help, had requested back-up from Dispatch, and he could hear sirens in the background so he knew that his cover officers were...were gonna be there shortly. But nevertheless, he continues to tase Mr. Brown, who is reacting to the voltage from the Taser gun. He's convulsing, rolling...rolling around, but essentially, on his stomach and appears to start to comply. Although Officer Stucker's giving him orders to put his hands behind his back, Mr. Brown seems to be putting his hands behind his neck but, nevertheless, seems to be trying to comply with these orders.

At about this time, Officer Ellefson arrives in his police unit in the parking lot to assist Officer Stucker. As Officer Ellefson exits his car, he can hear the electricity from Officer Stucker's Taser being discharged. He can clearly see the condition of Mr. Brown on the ground reacting to the Taser and he approaches and orders Officer Stucker to disable his Taser weapon in order for him to go in and effectively handcuff Mr. Brown, get him under control.

Officer Stucker looks down at his weapon, his Taser weapon, to flip the switch and as he's disabling his Taser weapon allowing Officer Ellefson to proceed with the handcuffing, he hears one handcuff go on...go...engage. He looks up and, at that point, he sees Mr. Brown able to get his arms away from Officer Ellefson, in a position where he is attempting to raise his body and essentially throw Officer Ellefson off of his back, who had kneeled down and put one knee – Officer Ellefson had bent down and put one knee and his weight, his body weight – into Mr. Brown's back, grabbed his arm, attached one cuff to his wrist, and at that point, Mr. Brown reacted, got both arms free, positioned them in a way that he was able to eject Officer Ellefson from his back.

Officer Ellefson, at that point, stepped backward, was trying to gain some distance between him and Mr. Brown, and he orders Officer Stucker to apply another Taser jolt. Officer Stucker realizes that one of his probes is no longer in Mr. Brown so he removes...Officer Stucker removes the cartridge from his Taser in an effort to allow the Taser to be used as a contact weapon or a contact Taser. When he does...when Officer Stucker removes the cartridge, Officer Ellefson, at that point, steps back and removes his Taser from his holster that's on his belt and aims it at Mr. Brown.

As Officer Stucker moves in to attempt a contact tase with his Taser, Officer Ellefson fires his Taser and one probe strikes Mr. Brown and, apparently, one probe strikes Officer Stucker in the hand. Officer Stucker then receives an electrical shock from Officer Stucker's Taser and he removes himself from the fight with Mr. Brown, steps back, turns his back to the fight, and tries to deal with this Taser probe that's in his hand. Officer Ellefson, at that point, is attempting to Taser Mr. Brown, but finds that his Taser has no affect on the subject and by affect, he means that he is still yelling, cursing. Officer Ellefson has used the Taser before. He knows what the results should be and these results are not being experienced so he knows that his Taser probes are not properly or accurately working. So Officer Ellefson steps back and removes the cartridge from his Taser gun, which will allow him to effectively step in and deliver a contact tase as well.

Officer Ellefson attempts to do that, moves in on Mr. Brown, applies a contact tase to his upper body, upper shoulder area, but it does not seem to have any affect on Mr. Brown. So Officer Stucker...excuse me, Officer Ellefson moves back again, goes in a second time, attempts another contact tase and both subjects are kind of falling to the ground at this point.

During this maneuver, during this attempted contact tase by Officer Ellefson, he is warned by Officer Stucker regarding the...the loose handcuff and Officer Ellefson now loses his Taser gun in the fight.

He drops it, comes loose from his grip, falls somewhere into the proximity of Mr. Brown. Officer Ellefson steps back, looks down, sees Mr. Brown attempting to grab or reach down with his right hand. He sees the Taser in the close proximity of Mr. Brown after the scuffle and as Officer Ellefson is stepping back, it is described that Mr. Brown retrieves the Taser with his right hand, comes into a squatting position and lunges toward Officer Ellefson.

At the same time, now, Officer Stucker also sees Mr. Brown retrieve the...retrieve Officer Ellefson's Taser and he opts to deploy his expandable baton. So Officer Stucker is...removes his baton – he had placed his Taser in the small of his back, unconvinced that it was going to work – places the Taser in the small of his back, draws his expandable baton and delivers two baton strikes to Mr. Brown's left leg in the vicinity of the shin, just below the knee, hits him twice in the shin.

When...as the...as he recovers and is attempting to hit him the third time with the baton, Officer Ellefson had stepped back, according to his description, approximately two feet away from Mr., uh, Mr. Brown, drew his duty weapon and fired two rounds, striking Mr. Brown twice in the chest – once to the left of midline, once to the right of midline – in a natural recoil position. He fired from the hip without obtaining a sight picture on the weapon, as he is more or less stepping backward, approximately two feet from Mr. Brown at that mom...at that instant. Mr. Brown falls, braces himself, falls forward, and then the Taser gun is apparently kicked away and recovered some 20 feet from the incident.

So, that's essentially the summary of the fight and what had occurred in the parking lot during the course of the incident. We've tried to, for the commissioners, to...to get a clearer understanding of some of these events. We've tried to take them...or I've tried...tried to take these in...in somewhat separate order and, if you'll notice, on Page 3 of the...of the report, the heading of "The Use of Taser Equipment." Because Mr. Brown was killed as result of this Taser equipment, a lot of the questions that were raised or that were brought to the Commission, were as a result of this Taser equipment. So we've tried to look at the Taser equipment itself and the actions of the...with respect to each officer involved in the incident – how it was used, how it was utilized. And we've...I've taken essentially four...four time...time periods during this struggle which lasted, you know...a pretty short time, actually. Officer Stucker...well, let's see... The entire incident lasted less than a minute and a half. So these four instances take into account the initial contact, how the Taser equipment was used by each officer, Officer Stucker and his Taser equipment, the initial contact prior to the shooting, during the fight, at the time of the shooting, and then just right after the shooting.

What was going on with this Taser equipment during these phases of this altercation with Mr. Brown. This is what we've tried to answer for the Commission in this section of the report. And, if you'll notice, Officer...the officers were armed with different types of Tasers, although they're manufactured by the same company, the Taser equipment is slightly different.

Now, Officer Stucker had the older model, which was the Advanced Taser Model M26 Law Enforcement. There's a few characteristics of that Taser that are slightly different than the one Officer Ellefson was armed with, which was the Advanced Taser Model X26 Enforcement...Law Enforcement model. Both manufactured by Taser International, Scottsdale, Arizona.

Now one of the...one of the questions that came about in Summary Report No. 1 following the briefing was that during Capt. Cannon's briefing to the CPRC, initial briefing, there was a statement made that fearing for their safety, because the power indicator light for the Taser was on, Officer Stucker hit Mr. Brown with his expandable baton.

Now, the following question was raised as a result of that statement and the question essentially said, "If the power indicator light on Officer Ellefson's X26 is displayed on the screen on the back of the weapon facing the operator, how could the officer see the light if it was being pointed at them, at the officer?" Now, according to Rick Gilbert, Vice-President of Training at Taser International, the X26 has a two-digit LED panel on the rear called the Central Information Display (CID). This is

located just above the grip of the weapon, that is handled just like a gun, and faces the operator. There's a small screen just above the grip and faces the operator. When the X26 is armed with the safety switch in the up position, the CID will indicate the percentage of remaining battery strength in the digital power magazine for five seconds, so that screen will display the battery strength for five seconds. Then the CID, the screen, goes blank after five seconds except for a small green dot in the lower right corner that indicates that the device is armed. It's...this...this CID panel, or this screen, is actually a...a monochromic green in color when it is lighted.

However, the Model M26, which was the weapon that Officer Stucker had, it has a red light called the "power indicator" and it is located just above the grip and faces the operator. This light might pulse or it could be solid, depending on the type of batteries that are being used in the weapon. It is not a reliable indicator of battery strength. It merely indicates that there's enough electrical power being supplied to the unit. So now, the officers had said that...Capt. Cannon had said that the officers had seen the power indicator light on the weapon. That's where it is and that's how it can be determined.

Now, according to Mark Fox at the San Diego Regional Law Enforcement Training Academy, the X26 also has an illumination light and a laser sight on the front of the weapon. Both can be activated, according to the way the individual officer has the weapon programmed; in other words, the officer can...can program his personal weapon as to how he wants it activated when he turns it on. Some officers may not want the illumination light to come on or they may not...or they want the laser light to come on at one instant, they want the illumination light...they can program that according...according to their own desires upon their personal weapon.

We don't know how these weapons were programmed. We...it was...it was never described, so, so we don't really know. But the illumination lamp and the laser sight...of course, the laser sight would be a red, visible dot. If you're pointing the Taser at somebody with the laser sight, you're going to see the red dot from the...from the Taser. You're also, if it's turned on when the switch is up, the illumination lamp is on, you're going to see that as well. Now, if an officer was looking at the Taser from that position and seeing the laser light or the illumination light, he would know that the...that...that...that the unit was on, activated, and you know, ready to go. But, we don't actually know from the statements which light Officer Stucker was referring to when he said that...when Capt. Cannon said that the officer saw the light...the indicator light. So we don't know from any of the reports exactly which light he was referring to.

Now, with...with Officer Stucker, in the initial contact with Mr. Brown, now Mr. Brown was wearing...he was wearing no shirt; he was wearing dark-colored jeans and tennis shoes. Officer Stucker, when he got his Taser out of the car, he approached him, pointed his Taser at him, and began to give him commands. Now, according to the data report, which is a recorded data recording device that's... that's with each Taser equipment, Officer Stucker's Taser was activated on that date at that time, at least on three different occasions and the cycles for each one of those activations is five seconds. The Taser is automatically activated as soon as you pull the trigger and the uh...and the darts are fired from the weapon. It automatically activates for five seconds. Then it'll activate every five second after that once you pull the trigger. Now according to Mark Fox of the Regional...San Diego Regional Law Enforcement Training Academy, it is generally...generally recommended during Taser training that officers use the Taser with at least two officers present in order to assure maximum safety for the officers and the suspect. However, the weapon is designed for sing...single-officer use under circumstances deemed reasonable to the officer. For example, if the officer's senses a situation is too dangerous to go hands on with a violent, non-compliant individual an...an escape or an attack might be imminent. The officer can use it. It's just general training practices that they say, more than one person should be present when you do this. You don't want to leave a...a suspect being tased on the ground for an extended period of time. It's dangerous not only to the...to the suspect, but it's ultimately dangerous to the officer as well.

Now, um.....now just prior to the shooting, Officer Ellefson told Officer Stucker to deactivate his Taser. Officer Stucker had Mr. Brown down on the ground. He was being tased. He was in a

somewhat compliant position. Officer Ellefson arrives, moves in to...takes his handcuffs out, moves in to actually handcuff the suspect, orders Officer Stucker, "Shut off your Taser." Now...uh...now, according, once again, to the San Diego Regional Law Enforcement Academy, officers are generally trained that the assisting officer go to "hands on" and do handcuffing while the Taser is being cycled. In other words, you want the, uh...you want the suspect to be feeling the affects of the Taser while you're actually handcuffing. The likelihood of being shocked during that maneuver is...is pretty unlikely and it gives the officer much better control over a violent suspect. If you...if you deactivate your Taser, like in this case, when Officer Ellefson told Officer Stucker, "Shut off your Taser," if you have an overly violent suspect, he may...once the electrical shock has stopped, he may very well begin to fight again and then you've got...you know, you've got the whole situation back, uh...back on board. So general training practices are is that you...you attempt to handcuff, restrain during the cycling procedure.

Now at the time of the shooting, Officer Stucker said that Mr. Brown was in a squatting or sitting position with his legs in front of him and was holding the Taser in his right hand. Mr. Brown was attempting to raise himself and deploy the weapon. At the same time, Mr. Brown was pointing the Taser at both himself and Officer Ellefson. Now at this instant, Officer Stucker opted to deploy his expandable baton. Officer Stucker moved to within striking distance, hit Mr. Brown twice in the shin area below the knee, was preparing to hit Mr. Brown a third time when Officer Ellefson fired two shots.

Now, after the shooting, Officer Stucker stated in his interview that he was no longer able to see Officer Ellefson's Taser and warned Officer Ellefson that Mr. Brown may still have the weapon in his hand. Mr. Brown was described as being "curled up" with his hands tucked underneath him. Now the X26, Officer Ellefson's Taser, was recovered and photographed over 20 feet away from where Mr. Brown was shot and ultimately fell. Now Officer Ellefson stated in his interview that Officer Stucker moved in right after the shooting and kicked his Taser away, so there's...there's somewhat of a conflict there between what actually happened with that Taser. It...it just isn't all that clear. It was clearly recovered a nu...20 some feet away, but when and how it was actually kicked away we're not absolutely certain.

Now Officer Ellefson, in his initial contact with Mr. Brown, he arrives while Officer Stucker's pointing his Taser at Mr. Brown and Mr. Brown is in this somewhat compliant position on his stomach, but still struggling. As he exits his car, he can hear Officer Stucker's Taser cycling, or the electricity going through the Taser. Officer Ellefson said it appeared, initially, he was going to comply. He said he grabbed...he went over, ordered Officer Stucker to turn off his Taser, bent down, put his knee in his back, placed his full body weight on top of Mr. Brown, took one hand, cuffed him, and at that...at that point, Mr. Brown resisted; he lost control. He ejected Mr...Officer Ellefson off his back and, um...Officer Ellefson, as he moved back, perceived this as a threat from Mr. Brown, drew his Taser and, ultimately, fired from a distance of about six feet.

Now Officer Ellefson, just prior to the shooting, said that when he fired his Taser, he saw both Taser probes stick into Mr. Brown. However, the Taser did not seem to have any affect and he described as not having any affect, his actions as far as yelling, screaming, waving his arms, things of that nature. It just didn't stop the behavior that Officer Ellefson expected when he fired his Taser. Now, according to the data report on Officer Ellefson's Taser gun, his Taser was actually cycled seven times during that incident so...that's with the probes and after removing the cartridge as a contact Taser.

Officer Ellefson said a number of times in his interview, that he was unaware of Officer Stucker's position during this maneuver. In other words, when Officer Ellefson stepped back, drew his Taser, and fired, he was unaware of Officer Stucker's position, where he was, even in the fight at that point, and he was unaware that he was...he had actually been tased until act...the incident was completely over.

Now because Officer Ellefson's Taser, to his perception, didn't have any affect when he fired the probes, Officer Ellefson removed the cartridge from his Taser gun, which exposes the internal probes, and decided to move in and attempt a contact tase to get Mr. Brown under control. It was at...it was during this maneuver that...that, that he was warned by Officer Stucker of the loose handcuff that Mr. Brown still had dangling from his wrist. It was also during this maneuver that Officer Ellefson, at this point, lost control of his Taser without the cartridge. He had removed the cartridge, moved in on Mr. Brown, attempted a contact tase, and during the struggle, dropped...dropped the Taser.

When he looks down, as he...he describes pushing off of Mr. Brown's back, stepping backward and looking down, he sees Mr. Brown reaching down with his right hand, grabbing the Taser, coming to a standing position, lunging toward him in a...in an attempt to attack him with the Taser and, from a distance of about two feet, he draws his weapon, fires two shots into Mr. Brown.

Now according to Officer...at the time of the shooting, according to Officer Ellefson, he could not see Officer Stucker. He did not know where Officer Stucker was although we know from Officer Stucker's statements, as well as the autopsy evidence of the impacts to the legs from his baton, that Officer Stucker was actually striking Mr. Brown with his baton. But Officer Ellefson was unaware of Officer Stucker's location.

Now after the shooting, Officer Ellefson said it initially appeared, after he fired the two rounds, to him, that the rounds did not have any affect on Mr. Brown, initially, although he had described Mr. Brown's position as being standing, lunging, pointing the Taser at Officer...the...when he fired the two rounds, he said it...it...it did not seem to have any affect initially. Eventually, Officer Ellefson describes Mr. Brown as being down on his knees and he drops the Taser and that's when Officer Stucker came in and kicked it away.

Now both officers, during the incident, had activated their belt recorders, tape recording devices. Officer Stucker did it as soon as he retrieved his Taser, moved from his patrol car into a position where he could once again see Mr. Brown in the cubby hole in the parking lot or in the southwest corner of the parking lot. He activated his belt recorder. Officer Ellefson activated his belt recorder as soon as he got out of the car af...after he parked his car in the parking lot. So both belt recorders were running and recording the, um...recording the incident. Officer Stucker's belt recorder ran for a total of 8 minutes and 37 seconds; Officer Ellefson's belt recorder ran for a total of 13 minutes and 4 seconds.

During the event, you can hear...it happened so quickly and it's so loud and there is so much going on...we're gonna let... We actually have the transcriptions of both belt recorders attached as appendix...as attachments to the report. We're gonna actually let you hear that uh...that recording and you can listen to it. We weren't able to actually detect certain language or certain things that were said in the recording until we actually listened to it in a, uh, enhanced version with some pretty sophisticated earphones, so it's difficult to...to understand, but the transcriptions have been provided by the Police Department. We did not actually have these at the time the uh...uh, this report was completed so there is a footnote to that effect in the report, but the reports were provided yesterday, or the transcriptions were provided yesterday by the Police Department of both Officer Stucker and Officer Ellefson's recording.

So Phoebe, if, um... if you'd like to...both of those transcriptions are at the back of your report. You're welcome to follow along or just listen to the recording as we play it. It only lasts for a minute or so. So Phoebe, if you want to go ahead...

(Enhanced on-scene incident audio is played for approximately 10 seconds.)

Okay, this is...this is, initially, Officer Stucker's contact with Mr. Brown. It's as he approaches Mr. Brown with his Taser in...in...in the cubby hole. Officer Ellefson has not arrived yet, so this initial

part of the ca...the recording is just from Officer Stucker.

Go ahead, Phoebe.

(Playing of enhanced on-scene incident audio continues for 20 seconds.)

Okay, at that point, you can hear the electricity in the background. That's from the Taser. Officer Stucker has fired his Taser and this...what Mr. Brown is saying is as...is as a result of this.

Okay, go ahead...

(Playing of enhanced on-scene incident audio continues for approximately 2 minutes, 53 seconds.)

Okay, that lady that was scre...screaming in the background there, that was one of the witnesses, um...following the shooting. So you could hear...you could hear as it kind of transgr...or transpired, Officer Stucker, Officer Ellefson, the entire incident...it was...it was pretty rapid, uh, a pretty high key...uh, event.

What we've done, or what I've done in the next section here, actually, there were...on Page 9...there were actually four questions and corresponding statements at key points during that incident that came to light in the investigation. These questions have...have been tried to be answered through sources essentially from Officer Stucker's statements, Officer Ellefson's statements, other RPD officers that were present and, of course, Capt. Cannon's presentation to the CPRC when he presented the...the case initially.

Now, Question No. 1, of course, was: What was happening when the shots were fired? Now, what was actually happening when the shots were fired according to Officer Stucker, Officer Ellefson, other officers present, and Officer Cannon...that's the way this uh...this section of the report is, uh...is more or less laid out.

The second question, of course, is: In what position was Mr. Brown? Now, we found that in the investigation and the uh...the initial thing, there were so many conflicting statements with regards to civilian witnesses who were present, the officers who were present, as to what position was Mr. Brown in and was he actually presenting a threat to the officers that would justify the uh...the, the use of deadly force. So we've tried to extrapolate what position he was actually in based on these statements in this section.

And then, of course, the third question: Who was Mr. Brown actually pointing the Taser toward? According to Officer Stucker, Officer Ellefson, Mr. Cannon...Capt. Cannon.

And then, of course, in what position was Mr. Brown following the shooting, after he was actually shot? Some of these questions are brought to light through questions presented in the interviews by various detectives; Detective Medici, Detective Cobb, so forth.

There was also, of course, physical evidence that was drawn and worked on during the course of the investigation because the question was: Did, of course, Mr. Brown actually have possession of that Taser weapon? So, of course, there were fingerprints of the weapon that were taken. According to Dawn Boggs at the Riverside Police Department, 13 fingerprints were uh...lifts were taken from Officer Ellefson's Taser. However, none of them were of sufficient quality to actually make an identification.

Then, of course, there was DNA evidence that was take...or, uh...obtained and submitted to the Department of Justice (DOJ) for examination to try to determine did...did Mr. Brown actually have possession of that Taser weapon during the incident? And according to DOJ senior criminalist, David Wu, who examined the swabs taken...swab...from the Taser presented by the RPD, Mr. Wu

said he did not know from what part of the Taser the swab was taken. There was only one swab presented with three swabs...basal swabs and blood to compare with Officer Ellefson, Officer Stucker, and Mr. Brown. So there was one swab of the weapon; there were three swabs for comparison. Mr. Wu said that he did not know from what part of the Taser the swab was actually obtained. So uh...he...he said that he would actually expect that there would be at least three swabs, maybe one from the body of the Taser, one from the trigger, and of course, one from the probes. You would certainly expect to find – because Mr. Brown didn't have a shirt on, he was contact tased – you would certainly expect to find DNA evidence of Mr. Brown on the...on the probes. You may not expect to find DNA evidence of Mr. Brown on the trigger or the body or the grip or wherever. But in this particular case, there was only one swab taken. It could have been from the whole gun. It could have included the grip, the body, the probes, the trigger, the trigger housing, um...we just don't know.

Now the conclusions of those DNA tests uh...which um...according to Mr. Wu, both Officer Stucker and Officer Ellefson were excluded as potential donors for the DNA evidence that was actually present on that swab. Lee Brown is uh...is included as a potential donor and the numbers are astro...I mean, it's...it's a positive identification. There's no question about it. However, the location of the DNA evidence, of course, is still in question...as it was recovered from the weapon, at least.

Now the autopsy was preformed locally by Dr. M. Scott McCormick, M.D., Forensic Pathologist, County of Riverside Sheriff's / Coroner's Office. Now...Dr. McCormick concluded in his autopsy that there were, of course, the cause of death were...was gun...gun shot wound...wounds to the torso. One actually lodged in the heart, which, uh...which was the cause of death for Mr. Brown.

There were actually three entry wounds, if you can picture this: three entry wounds, one exit wound, both bullets were actually recovered from the body. One of the entry wounds was in the left arm, lower part, underneath the tricep. One exit wound was on the inside of the arm. Where this bullet had entered, it exited the arm right here, entered the chest, left of midline, lodged in the heart.

The second round, or the second bullet, actually entered the right side of the chest at an angle, right of midline, and traveled down through the chest cavity and lodged in the flank. Both rounds, once again, were recovered inside Mr...in Mr. Brown following the autopsy. Those descriptions are given here. There were also...there was also evidence, of course, of Taser...Taser burns. There were...there was the evidence of the blunt impacts to the extremities, which included the baton strikes to Mr. ...Mr. Brown's left leg.

So the question arose: what position was Mr. Brown actually in when the shooting occurred? And with all the witnesses, the officers, the civilian witnesses, there were a number of descriptions or scenarios that were presented as, uh...as his position when he was shot. So what we've done, is that we've actually asked a um...Applied Graphics of, uh, Sciences of San Diego to review all of the autopsy evidence, the reports, the things of that nature and prepare a trajectory scenario based on each one of the descriptions as provided by the witnesses. So there's actually three...three scenarios that were presented as explanations of Mr. Brown's position when he was shot and of course, the uh...the number one position, as described by Officer Ellefson, was that Mr. Brown was in a standing position, lunging, with the Taser in his right hand, attacking...lunging and attacking him with the Taser.

Now, according to...according to Doreen DeAvery of Applied Graphic Sciences, who did the traj...trajectory analysis based on the information that was provided, it is most likely that Mr. Brown was not in a standing position, but was most likely in a squatting or sitting position to account for the trajectory of both rounds as they were presented. However, in the uh...in the first position, the standing position as described by Officer Ellefson, he said in his interview, "As I moved away, the suspect stood, kind of pushed forward, lunged forward, directly at me with the Taser."

Now, as you can see, Dr. McCormick never...never drew any conclusions with respect to first shot, second shot in his autopsy report. In these scenarios, the way they're pictured, the height of Mr. Brown and the scale at the bottom of the drawing, if you'll note, is in feet and the distance and the position have tried to ...we've tried to position and distance according to the officer's statement at the time. He was two feet away, moving backward, firing from the hip without a sight picture on his weapon. So in order to achieve that trajectory in a standing position, the...the first round would've had to enter the...the...the left arm...the left arm, go through the left arm, out the left arm, into the chest.

At that point, Officer Stucker would've had to have been kneeling down – that's the small box in the left hand corner – would have been kneeling down, striking Mr. Brown in the...in the left leg with his baton standing directly next to or very close proximity to Officer Ellefson.

In order to arrive at the trajectory for the second shot, Mr. Brown would have to have been falling or going down. If you listen to the belt recorders, the uh...the shots happened "boom, boom." It...it was almost...they are very close together, within very close proximity...very close. So it was concluded that it's...it's most unlikely that Mr. Brown was in this position at the time that he was shot.

Now the second scenario, as described by Officer Stucker, was that Mr. Brown was either in a squatting position or seated on his butt with his legs in front of him. Now, in a squatting position, that was kind of unique to Mr...to Officer Stucker. Officer Ellefson also made mention of a squatting position, but at the time of the shooting, he actually described it as standing. Officer Stucker more or less describes it as squatting, but also refers to the sitting position with his legs extended in front of him and this most closely matches what the civilians witnesses reported as seeing: Mr. Brown in a sitting position with his legs in front of him.

Now you can see with the uh...with the trajectory from the first shot through the left arm from the hip with the natural recoil of the weapon coming up, the second shot would have been to the right side of the chest cavity. So, for those two quick shots, as you shoot, the...the weapon will recoil up slightly and the second shot would most likely be on the uh, on the right side of the chest. You can see the position that the arms have to be in in order to achieve that first shot and whether or not...you know, whether or not it was an attacking position. Now for the civilian witnesses, they almost all consistently say that Mr. Brown was sitting on the ground with his legs out in front of him.

Now the medical and toxicology history of Mr. Brown...of course, the medical history has been arrived at primarily through interviews with his fiancé, Rosalinda Lara, who he had been with for a number of months and who he had been with the night before, woke up in this psychotic state, scared her. She ordered him out and he left in this mental condition that was described as pretty scary. Through interviews with her, she tells us that he had been diagnosed with a mental condition, paranoid schizophrenia with insomnia, and that he had been prescribed medicine, but she was unaware if he had been taking this medicine, if he had this medicine, what doses it was in, who may have prescribed it...we just don't know. We've...we've asked through proper channels with people who would...who would have that information and we have not been provided the...the medical information in any greater detail than that, so we're somewhat at a loss as to his exact prescribed medications and under what treatment he was.

But we also know from his fiancé that Mr. Brown was a user of narcotics, street narcotics, primarily marijuana and methamphetamine and he was known to smoke marijuana laced with me...methamphetamine. Now the toxicology report, as submitted following the autopsy according to the toxicologist at Bio-Tox Laboratories, the only drug that was noted in any quantity was amounts of Delta-9 THC, which is the main chemical that is used in diagnosing for...for marijuana. There was...there was no evidence of methamphetamine, cocaine, morphine, PCP, barbiturates, alcohol, or any of those other drugs were detected by the toxicology lab.

The last part of the report is a compilation of the civilian witnesses who had seen the...who had seen the incident and had reported what they had seen to both s...Riverside Police Department and the CPRC.

That kinda concludes the summary of this report. I'd be happy to try to answer any questions at this point.

COMMISSIONER CORRAL – Is it fair to say that Mr. Brown was actually pointing the Taser right at the officer?

MR. WARNBERG – I don't know where he was pointing it.

COMMISSIONER CORRAL – In that direction, towards...

MR. WARNBERG – Well, you can see from the trajectory analysis the most likely position with his arms.

COMMISSIONER CORRAL – ...and you have four civilian witnesses that claim that they saw that...

MR. WARNBERG – No, ma'am. None of the witness...none of the civilian witnesses...all of the civilian witnesses place Mr. Brown in a sitting position with the exception of Mr. Williams, Kenneth Williams, who said that Mr. Brown was actually standing, approaching the officers. However, none of the civilian witnesses said that they saw Mr. Brown with the Taser in his hand.

COMMISSIONER CORRAL – I have no further questions.

COMMISSIONER BRANDRIFF – But from the DNA evidence, we definitely know he had it in his hand at some point – some part of it, somewhere – he had in his hand, is that correct?

MR. WARNBERG – No, sir. We don't. We know that there was DNA evidence on the Taser. We don't know from where the DNA evidence was taken. In other words. Officer Ellefson had removed the cartridge, the uh...the probe cartridge and had approached Mr. Brown with the Taser in his hand and pushed it against his body to affect a contact tase. Now those probes...he didn't have any shirt on. I mean, those probes would certainly contain Mr. Brown's DNA evidence. When they did the swab for DNA evidence, they did a swab of the weapon. We don't know if they swabbed the sides, the probes, the trigger...we don't know if they swabbed it all. You would expect to find DNA evidence on the probes; you would probably not expect to find DNA evidence on the trigger or the grip if he didn't have it. If he had it in his hand, then you would expect to find it on the trigger or the grip. You see...you see what I'm saying?

COMMISSIONER BRANDRIFF – Yeah, okay...

MR. WARNBERG – So we don't know, based on the DNA...DNA evidence...I mean, we can't say conclusively from the DNA evidence that he had it in his hand.

COMMISSIONER PEARCY – A couple of different questions... Is there a way to kind of marry up the audio recording as it relates to the statements by the officers as to where they were relative to their position as to what we hear? For example, when there is the switch from Officer Stucker to Officer Ellefson with the Taser, and Officer Stucker appears to have been struck with one of the Taser darts at the first shot by Mr. Ellefson and then peels away to take care of himself... I have a hard time kind of finding out where that break in contact by Mr. Stucker in this sequence of events took place...

MR. WARNBERG – Yeah, it's very hard for...

COMMISSIONER PEARCY – ...especially for...especially given the time line involved. We're talking about someone that is...receives a trajectory, turns around, tries to attend to the dart, then turns back, engages with baton strikes, all in the su...I'm trying to...is there a way to...or have you attempted to try and marry that statement up with the audio tape as to where this would have taken place?

MR. WARNBERG – Not exactly in that context. It'd be very difficult to do. You have to look at the entire statement by Officer Stucker and then, you know, try to...try to put that into the tape recording context. It's very difficult to do. I...I have not attempted to do that.

COMMISSIONER PEARCY – Okay, yeah, 'cause it's kinda difficult to even make a determination where one ends and the other begins...

MR. WARNBERG – It is...

COMMISSIONER PEARCY – ...in terms of their ac...activities with the Taser...

MR. WARNBERG – It is. Absolutely.

COMMISSIONER PEARCY – ...'cause it seems that Mr. Stucker is continuously giving commands, almost...or almost continuously giving commands throughout. Umm...

MR. WARNBERG – Well, it appears that way in the transcription. I'm not so sure that it was...in...in reality, at least, according to his statement, there was a time when he...he clearly was...was wounded, I mean, that, uh...with a Taser dart. He recalls that quite vividly and he talks about it in his statement, stepping back from Mr. Brown, turning...turning his body away from and trying to figure out where this tase, where...where he is getting this Taser and sees that there's a dart in his finger. So there's clearly an instant or a time when he is looking away and not giving commands. If you...if...if you...if you just read the transcription, it appears as though it just flows continuously, but in reality, it does not. There is clearly, or at least you would have to assume based on his statement, that there's a break there.

COMMISSIONER PEARCY – Well, maybe for purposes of our report, helpful if that is kinda broken down so that way that there is...'cause I mean, again, for any member of the public or anyone else reading this report, although even though listening to the audio tape, it seems to flow together in a more time-compressed fashion than what's being described, especially 'cause it appears that there is the change over right about the time when the handcuff is swinging loose – watch out for the handcuff, it could be used as a weapon – and then that's where...that's about the time, if I recall correctly, Mr. Ellefson's about to engage.

MR. WARNBERG – Yeah, and if you look at the...where, on Page 8 of the report where we've done a summary of the belt recorder statements with the counter time in the event, that was...that was my attempt, I think, to ...to do what you have said, although, you know, without taking each...each line of the tran...and of course, we didn't get the...Officer Ellefson's transcription until yesterday. So, to try to take the...the entire tape...these are just some of the key statements at the time as they applied to both officers' recorders.

COMMISSIONER PEARCY – Well, the reason I'm asking it 'cause...this...basically, it's starting from where's he talking about, "Do it now...watch that cuff. He's swinging that cuff. It's a weapon." Officer Ellefson, "I've got it," appears, and may be incorrect impression, but that's about where mi...Officer Ellefson takes over with the Taser. And then I think, it would be shortly after that where then Officer Stucker would have been himself hit with a dart and maybe have taken out and...what my concern is, is given the compressed time line, and if one is to look at the way the transcript reads...I mean, it's...I'm concerned because part of what we're gonna be looking at is positions of the...of the...of suspect Brown here and the position of the two officers and that time / motion issue.

I think it might be helpful to take a look at that.

In terms of the DNA – how is it that Officer Ellefson is excluded as a potential donor of the DNA on that particular Taser when, in fact, that was his Taser and he would have been handling it?

MR. WARNBERG – Well, DNA is...according to Mr. Wu from DOJ, it would be like...it would be similar to the steering wheel on a car. The last person to touch it, that's their fingerprints. So you may very well not expect to find, if somebody else handled the weapon, you may not expect to find Officer Ellefson's DNA on the weapon...at least according to Mr. Wu, but...

COMMISSIONER PEARCY – You may...you may want to have our report kinda address that issue, 'cause I think that's gonna be a fairly natural question of any of the public that's gonna look at this report and wonder why.

Last question as it relates to your illustrations on the bullet trajectory. Are...were these done with, what I would call, proper scaling of Mr. Brown and Officer Ellefson and what I would call the use of rods through the wound channel to be able to identify exactly the trajectories or is this more or less done kind of on the computer where it's estimated? I'm trying to find out are these actual trajectories or estimated trajectories?

MR. WARNBERG – These are actual trajectories as described by Dr. McCormick in his autopsy report and follow-up consultation with him. These are measurements as described very vividly in the...in the autopsy report, as well as autopsy photos and consultation with Dr. McCormick.

COMMISSIONER PEARCY – Well, the reason of my question is, is it based on the location of the...entry and exit wounds or is it also including a trajectory through the wound channel, 'cause sometimes, again, if the body's up here, we've...we're showing three different potential positions and the first one, for example, in Scenario 1, it's...in second shot for each of them, actually, there...but it's more shown in the first shot in Scenario 1, it appears that there'd be the trajectory through the arm, because at least that's why I read it as the dark brown...that would be the wound channel within the arm just like in the shot...second shot, there's kind of a dark brown showing wound channel in the chest...

MR. WARNBERG – Yes, and we're not trying to depict in these pictures the actual wound. What we're...yes, the dots are positioned according to measurements that were given to...given to us by the autopsy report. In other words, we know the height, the weight of Mr. Brown. Dr. McCormick describes the entry wound as being eight inches from...from...wherever it was...from the top of the head or 16" from where...he starts and he describes that in his autopsy report. So those...those wounds are according to measurements provided by the autopsy...as well as photographs...the review of photographs and then of course, the statements of the officers as far as their position and what was occurring at the time.

COMMISSIONER PEARCY – But in terms of the illustration, the illustration...'cause again, most people are gonna be looking at pictures and they're gonna divine from what they see necessarily as opposed to what they read. Are these illustrations inclusive of, for example, the height and the...of Officer Ellefson, inclusive of the accurate location, that if he's standing as it's depicted here, this is, in fact, where...where the gun would be at...at that location, so that it matches up. Or are we taking, more or less, this is what the rods would show coming out of the body and so we're gonna adjust our...

MR. WARNBERG – No, this...well, what we've tried to do is actually put Officer Ellefson where he...he said he was...

COMMISSIONER PEARCY – Right...

MR. WARNBERG – ...and what he was doing.

COMMISSIONER PEARCY – And so the figure that we've got here in this illustration of the figure in blue is based on his height?

MR. WARNBERG – Yes.

COMMISSIONER PEARCY – Okay.

And then just one final question, just for consistency sake, we've got in Scenario 1, we've got the relative positioning of Officer Ellefson and Officer Stucker in both the first and the second shot, more or less, that's the smaller 1-by-1 inset, but we don't have that in Scenario 2 and Scenario 3. I'm just assuming it's more or less of an omission, but again, part of what we're trying to make sure our report is consistent and is there a reason why that's not in Scenario 2 and Scenario 3?

MR. WARNBERG – Well, in Scenario 2, uh, yeah, the inset is...is for both...for both positions. If you notice, the...the only change in the position is actually in the arm position. The squatting position remains the same.

COMMISSIONER PEARCY – Well, I guess I'm looking at the relative positioning of Officer Stucker to Officer Ellefson as illustrated in Scenario 1 not being included in Scenario 2 and 3.

MR. WARNBERG – Yeah, because...because there's such a...because there's...there's such a difference in position, in other words, in Scenario 1, in a standing position, Officer Stucker would have to be striking from that position. Then it...then it changes in order to accommodate the trajectory of the second shot...Officer Stucker's position has to change slightly, whereas in Scenario 2, in the squatting position, Officer Stucker's position remains pretty con...I mean, it's pretty constant in both first and second shot.

COMMISSIONER PEARCY – Okay, then we may want to just footnote that on the bottom of the illustrations for Scenario 2 and Scenario 3 so that it's understood that's why that's not there.

MR. WARNBERG – Oh. Okay.

VICE-CHAIR WARD – Yeah, let me address a couple issues. When you were here before, you said you had gotten some recent information that indicated that the tape revealed that Officer Ellefson made a statement just before he shot to "Drop the gun." "Drop the gu.." is what you understood it to say at the time. And I see on this report you've inserted that statement before, just before Officer Ellefson fired the shots.

MR. WARNBERG – Yes, sir.

VICE-CHAIR WARD – And I also noticed in the transcription that we have of Officer Ellefson that statement is in there, in his...the transcription from his belt recorder.

MR. WARNBERG – It is. It's in the transcription as "Drop the gun." It's in the...it's in our be...belt recorder summary as "Drop the gu.."

VICE-CHAIR WARD – "Drop the gu.." Right...

MR. WARNBERG – That's the way we heard it, but in the transcription provided by the Police Department, it's "Drop the gun."

VICE-CHAIR WARD – Right. Now, you said that you had just gotten that information just prior to coming to our last meeting.

MR. WARNBERG – That's correct.

VICE-CHAIR WARD – You mind telling us where that information came from?

MR. WARNBERG – Yes. It came from the FBI agent in Los Angeles.

VICE-CHAIR WARD – Okay. It came from the FBI agent who had conducted a civil rights investigation to see whether or not Mr. Brown's civil rights had been violated.

MR. WARNBERG – Yes. That's correct. I had called...uh, yeah, just before the last summary, I called the FBI agent just to make sure that, you know, there wasn't something that, perhaps, we had missed. And in discussing the, uh...the belt recorders, he explained that, because we had missed it the first time...we just couldn't hear it on the recording. He said that he...he...it had to be pointed out to him as well, and then when he went back and reviewed it, then he was able to hear it. So, we did the same thing...

VICE-CHAIR WARD – Who pointed it out to him?

MR. WARNBERG – We did the same thing. We went back and reviewed the enhanced version of the recording and were able to discern that statement just an instant before the first shot, but we heard it as "Drop the gu..."

VICE-CHAIR WARD – Did he say who pointed it out to him?

MR. WARNBERG – Not...not as an individual, just the, uh...Police Department.

VICE-CHAIR WARD – Okay. My problem with that is, you know, I've read both belt transcriptions. I've read the criminal investigator's interview of both officers and in neither one of those documents have I ever seen where the Taser was responded to as a gun. In this transcription you have here, there's no indication of the Taser being responded to as a gun. And let me...if you will go with me to Page 10... When we deal with Question 4, Brown's position after he was shot. First you have a statement from Detective Cobb, followed by a question. The statement is "The suspect has still got the Taser in his hand. Are you and / or Officer Stucker still giving commands to him?" Officer Ellefson replies, "I'm...I was giving commands for the suspect to get on the ground." Now, if he had just made the statement to "Drop the gun," and if the man still had the gun after he did, wouldn't you think that his statement would be to "Drop the gun" rather than "Get on the ground?" I mean, this is a perfect opportunity for him...you hear them all through that thing, repeating, "Get on the ground, put your hands behind you. Put your hands behind you. Put your hands behind you." But this one situation, that's the only time we hear anything about a gun. And even when the guy asked him what happened after that, he still got the Taser in his hand after he's shot, but he's asking him to get on the ground. To me, it doesn't make any sense.

Another concern that I have, is I've talked to you in between the last time you were here and I shared with you that the goal and objective of this commission in an officer-involved shooting is to try to make a determination as to whether or not these shootings are within policy. And I also shared with you that we are not experts, but we are able to hire experts and that's your agency, to give us an expert opinion in that regard. And, at the end of the day, you know, I see you have here the DNA and fingerprint, the autopsy, the trajectory analysis, and all of those have offered summaries and conclusions. So my question to you is, what is your summary and conclusion in regards to this shooting?

MR. WARNBERG – Well, I've tried...I've tried to lay it out, Mr. Ward, as...as...as clearly as I can in the report.

VICE-CHAIR WARD – But, let me just share with you. You know, you take the trajectory analysis. This person say that they have reviewed witness statements, photographic evidence, autopsy report with additional consultation to Dr. McCormick and the officers' statements – they have reviewed all of that and you've summarized it with a fourth of a page. And if you gave us all the photos, all the witness statements, it would probably be 10 or 12 pages. So you took that 10 or 12 pages and reduced it to a quarter of a page (mic trouble – unintelligible), but yet and still, you want to give us a summary of 24 pages of your...your summary entails 24 pages? Why can't you give us a summary that is clear and concise like the lady gave you from...that did the trajectory analysis?

MR. WARNBERG – Um, well... I think the... In response to that, I think that the, uh, that this report, and all of those pictures and all of those things that I referred to in this first paragraph of the trajectory summary, all of these things are actually included in the autopsy photographs, the autopsy report, and this report is just simply to try to summarize those key areas for the commissioners' consideration, not to try to, you know, regurgitate and add all of that information here. This is simply kind of a guide post. If...if these are things that are of concern to you or to any of the other commissioners with respect to the witness statements, the photographic evidence, the autopsy report, and those sta...additional statements by Dr. McCormick, then CPRC has all of those reports and photographs available for your individual review.

I haven't tried to actually include all of that in this. It's just simply a guide post in a summary format to try to explain the key issues for...for you to try to come to a conclusion on your own.

VICE-CHAIR WARD – Yeah. I understand that. But in addition to the items that you just mentioned that we have, we have all of this other information that you've submitted, you know? We have the officers' statements, we have the witness statements, we've got all of that, so we don't...we don't need to re-read what we've already read several times. What we need is to take all of this...you took the autopsy, the trajectory report, the DNA, and you gave us three important pieces of the puzzle. But as far as I'm concerned, the puzzle is missing. You know, br...your...the other aspects of this investigation...

MR. WARNBERG – Well, I've tried to...

VICE-CHAIR WARD – ...and you're supposed to bring it and so we can put those pieces in place where we can see the big picture.

MR. WARNBERG – Well, I've tried to include those key...those key elements that you're...that you're requesting. With respect to the trajectory evidence, what we were trying to establish through this trajectory analysis is what position Mr. Brown was most likely in at the time of the shooting.

VICE-CHAIR WARD – I understand that.

MR. WARNBERG – And I think that you have that in a, uh... in a summary statement by...not according to me, but according to, like you say, the experts that we've hired, Doreen DeAvery of Applied Sciences who did the trajectory analysis. She's issued...she's given us that statement. Now the same is true with respect to the DNA evidence. If you look at the, uh, if you look at the statements according to Mr. Wu...according to Mr. Wu, he gave us some statements with respect to how to analyze that DNA evidence, and the same is true for the training issues with respect to the Taser equipment. Not only from Appli...Taser International in Scottsdale, who we asked specific questions, but also the training facility in San Diego at the Regional Academy. So we have experts that are giving additional opinions. They're not my opinions; they're opinions that we've sought from other people.

VICE-CHAIR WARD – You hired Applied Graphic Science to do the trajectory analysis...

MR. WARNBERG – Yes, sir.

VICE-CHAIR WARD – ...and they gave you the results of their analysis. That's what you asked them for.

MR. WARNBERG – Yes.

VICE-CHAIR WARD – The same thing you asked them for, that's what we ask you for. That's what we're asking you for.

MR. WARNBERG – Well, you're trying to get...you want me to say whether or not this shooting is in or out of policy?

COMMISSIONER PEARCY – Mr. Chair, I would ask a question of you, sir. We hire an investigator to do exactly that: to investigate and provide the facts, but it's our roles to make...to be the finder of the facts and then, ultimately, arbiter or decider of the facts. I think what you're asking our investigator to do is to do our job for us. I mean, he's...he's done what, I think, we've exactly hired him to do, which was to go out, gather facts, either from the scene or from witnesses, and to gather facts for our benefit from the invest...the other expertises such as those with trajectory, DNA, etc., provide us those expert conclusions, and I think it's our job to take that information, to weigh the evidence that's presented to us and come to a conclusion. I don't necessarily know if it's his job to come to a conclusion and we more or less either ratify or don't ratify his conclusion. And I...I...I guess my question is, what I'm hearing you ask for, Commissioner Ward, is him to give us a conclusion and I don't know where it is that that's part of his job's description.

VICE-CHAIR WARD – So, let me ask you a question. Are you saying, with this report, that you feel comfortable drawing a conclusion based on this report?

COMMISSIONER PEARCY – I think, ultimately, Commissioner Ward, it's our decision to make and draw a conclusion. What I think you're asking for our investigator to do is to give his final conclusion. I think that's what I'm hearing you ask him to provide us. There may or may not be issues, as I've raised some with respect to the report where I think there's some changes or modifications or clarifications that are required. I think our job was to take this report that's he's providing us with respect to the facts as he's investigated and facts as he's providing to us from various experts for us to then add to this report, which would be our conclusion based on the facts that are then provided us. That's our role.

VICE-CHAIR WARD – I understand that.

COMMISSIONER PEARCY - So, I...I guess I'm not quite sure why we're then trying to put the investigator in the position of finding those facts for us. It's his job, if we feel that there's facts that he should continue to gather, to investigate further, to clarify, then I think that's...that's appropriate. But for us to ask him, right now, to give us a conclusion, we're asking him to then do our job. You know...I don't know if that's... Obviously, I haven't seen the contracts of what our investigative firm is hired to do, but I think their job is to investigate and provide us the facts, not to investigate and provide us a conclusion.

COMMISSIONER BREWER – I'm in total agreement with Commissioner Percy. The investigator has spent a great deal of time and hard work and we complimented him on his investigation in earlier meetings and now we're...we're trying to tear him down. And Commissioner Percy's totally correct. It's not up to him to give us a conclusion of that report.

VICE-CHAIR WARD – I'm not asking him to give us a conclusion. This...this lady here, from trajectory analysis, have given us her professional opinion. We're not bound by that, but at least her opinion is there and if we decide to...that that's the correct opinion, not only do we have the co...opinions of this commission, but we have the opinion of an expert in the field who offered it.

So that would be... You know, what we got here would be tantamount to her sending him witness statements, photographic evidence, the autopsy report, with no conclusion and let him draw his own conclusion.

COMMISSIONER PEARCY – Mr. Chair...

VICE-CHAIR WARD – But thank you.

COMMISSIONER PEARCY – Mr. Chair, I got a question for you. Again, a point of clarification. I'm trying to understand if you're saying you're not asking him to draw a conclusion and him being our investigator, what are you asking for 'cause then I'm not clear of what you're asking him to provide. I mean, we have facts that are provided to us by our experts hired by our investigator. Now, in many ways, often times, there's often times differences of opinions between experts. That's, quite frankly, what makes interesting discussions, but it's a question, if...if we don't believe or we don't feel comfortable with the conclusion that may have been drawn by one of the experts, I think we then, of course, could instruct our investigator to have that reviewed a little further and maybe by a different party. But I think, what I'm hearing you ask our investigator to do is then, more or less, take all of the information that he's gathered to synthesize it and then render a conclusion for us to adopt and ratify or not and I don't think that's 1) his job – I don't think that's what he's hired for; and 2) I think that, to do that, you would be having him do our job, and I don't think that's appropriate.

VICE-CHAIR WARD – Let me just give you an example. Maybe I can explain to you by example. Go to Page 9. Okay, you look at Question No. 1. "What was happening when the shots were fired?" This question was asked to Officer Stucker and Officer Ellefson. You got two different answers about what had taken place. You go down to Question No. 2. "In what position was Brown shot?" You got two different answers from these officers that were both on the scene. So, it seems to me, that both of them can't be right, so as a result, the evidence may support one or the other and it may impeach one or the other's credibility and that's what we...you know, that's what we're looking for, you know? So...

COMMISSIONER PEARCY – Right, but Mr. Chair, I think...and your points are very taken and I would suggest that all you have to do is walk across the street any day of the week where business is being conducted at the civil court and sit in a car accident case and you'll see that, often times, there's one witness that says the light was red and another witness that'll say the light was green. My point being, and I'm not trying to be facetious or glib, the fact of the matter is, often times, sometimes, there can be two different points of view of the same occurrence by multiple witnesses. That is not necessarily meaning someone is being deceptive or someone is being intentionally accurate. This is all based on perceptions. It's our role, I think, is to sort through the various testimony we have and it's our role to then come to a conclusion based on the evidence provided. Yes, it's clear, there is some differences in the statements by Officer Stucker and Officer Ellefson. It's also clear, based on some expert testi...or witness...expert evidence provided to us, for example, through the trajectory analysis, that it is probably more likely than not that shooting Scenario 1, as proffered by Mr. Ellefson, is not an accurate recollection. Now, whether or not Officer Ellefson is recalling deceptively, being intentionally or if he's just recalling intentional or erroneously unintentionally, it's a high stress factor. That's for us to look at and for us to include in our analysis. That's not for our expert and our investigator to do. That's our job.

VICE-CHAIR WARD – Are there any other questions from the commissioners?

COMMISSIONER GARCIA – Yes, I have a question. Mr. Warnberg, in reference to the Taser guns. Were you given the opportunity to see or examine those...either of the similar Taser guns that the officers used when you did your report?

MR. WARNBERG – Excuse me... Seeing, from the standpoint that we had photographs of both weapons, actually, physically, seeing the weapons...no we were not.

VICE-CHAIR WARD – Any other questions?

MR. WARNBERG – Er...Excuse me, Mr. Garcia. I stand corrected on that. From seeing the...from the standpoint of seeing, we were provided photographs of Officer Ellefson's weapon. We were never provided photographs or allowed to see Officer Stucker's weapon.

COMMISSIONER CORRAL – I think that you did a very good job putting this together and it answered a lot of my questions that I had. One of the questions that I...I think you might remember me asking "was he sitting or standing" and I think this...this captures where he was and it also defines the um...the use of force and the escalation that the officers followed and I...I just want to say I think you did a good job clarifying it.

COMMISSIONER PEARCY – Yeah, one, uh...one potential other thing I would like to see perhaps added into this would be photographs. We've got two different Tasers that were involved. If we could just have inclusive a photograph of each Taser or the representative of that particular model and its shape so that way we can identify what that particular Taser looks like. There's older Tasers that look sorta like a flashlight and there's newer Tasers that look sort of like a gun and I don't know if the X26 versus the M26 are similarly shaped or differently shaped, but it might be helpful, as well, for those who review the report, to be able to identify the shape of that Taser.

MR. WARNBERG – Okay.

VICE-CHAIR WARD – Thank you, Butch.

Public Comment

Now we'll take public comments. Mary Shelton...

Mary Shelton

Hi. I'm Mary Shelton and I'd like to thank Mr. Warnberg for his detailed report. I did have a couple questions, but Mr. Ward touched on several of them. First of all, it's pretty disappointing that the DNA test was done the way it was done. First of all, one would think that you would take multiple swabs and multiple samples from different portions of the Taser, including the areas where he would be most likely to have contacted with it and areas that were less likely, like the trigger and the handle. What I saw here was I saw that they took two...there were at least two DNA samples, none of which were...belonged to those two officers. So I was kinda confused when they said it was the last person who touched it because there's one that's a positive identification for Mr. Brown and then there's these...at least two others and from what I understand, they're all low-level samples, which means it's not a large sample. But like he said, they don't know where they took the sample from, and if you don't know where you took the sample from, there's not much you can do about it because he had co...he had multiple contacts with that Taser. He was, um...dri...he was contact stunned, according to this, anywhere from three to five times 'cause Ellefson, I believe...I counted 'em in his thing where he said maybe three times, but then the Taser discharge was a little bit different and it was five times. So there's no real conclusion and that was a very important piece of evidence, if there was DNA on it. I mean, of course, if there wasn't, it didn't rule it out, but it's just really confusing.

And the thing with the belt recording that's confusing is that, okay, you have a transcript where it said the...wri...that was the one that came in yesterday...ther...the Police Department said it said "Drop the gun." But there's...as you notice, and I don't know if Mr. Ward brought this up, I believe it says "Unidentified Speaker," and it's not attributed – is that accurate? – it's not attributed to either one. And before, they made it seem like it was a definite identification for, um, Mr. Ellefson, but here it says "unidentified Speaker," so again, there's no evidence that it...it was his statement if they can't even identify it because someone else could have been standing there, saw Ellefson with the gun and was shocked and said...you know, may...they may have said it or it may have been a similar statement saying, "He's got a gun," or something. There's no definite evidence tying it to Mr. Ellefson according to that transcript. I mean, if it's an unidentified speaker, that's not saying it's Officer Terry Ellefson, is it?

And, um...so that was another thing, and I had a little bit of confusion because you have two transcripts. Neither of them have a timeline. The...the partial one last time had a time line. These ones don't and the reason why that's confusing is because on one of them, you have an unidentified speaker saying, right before the shots, "Drop the gun," and in the other one, Stucker's, you have a speaker who's been identified as Terry Ellefson right before the shot saying, "Put your..." I think it was, "Put your hands behind your back." And there's no indication, time wise, to say when each statement was said and I think that's...you know, like, because they're two separate recordings and each recording only, apparently, caught one thing, it's gonna be very hard to compare who was saying what, especially when one of the speakers was identified.

I also noticed on the Tasers that is was hard to find a time line on that because, if you notice, Stucker's Taser said... the timing for Stucker's Taser was 3:13:55 for the first dar...discharge; the one for Ellefson was 13:48, so obviously, there's some sort of time problem because there's no way that...I mean, Ellefson discharged his Taser after Stucker, so there's something wrong with the Tasers in terms of how their timing is because, um...'cause from what I understand, the incident was around 2 o'clock and you have two Tasers that are timed earlier and they're not even timed in the right sequence and that could have been a useful tool, if you could have standardized the two to determine when the Taser strikes occurred, particularly the...the dry stuns, because on Ellefson...on Stucker's you can see the two that he cycled with the probes and then, there's a little bit later, there's the contact one and he wa...he was attempting when he was fired on by Ellefson's probe. But on Ellefson's, you just see the se...I guess, the ones he listed in his reports; the seven. So... And...and there's only...I mean, I didn't hear references in the report or the statement that Ellef...that Ellefson had fired seven....two, you know, the two and the five. And so um...and I think that was...that's another source of information where they could have, um...you know, found out more information.

Um...but the Tas...um, and the Taser thing that's confusing is, like, when did Ellefson fire his Taser all those many times, because Stucker was busy turning around to deal with the...'cause he had been shocked by Ellefson's Taser probe in his hand, so he did receive a shock, which is probably one of the reasons why the Taser didn't work on Brown because it was going two different ways and it was probably wasn't a good arc. But then we don't know how much time he was spending turning around dealing with the probe because when he turned back around, from what it says in the report, that's when, um...he...you know, they...the part when he saw...allegedly saw that um, Brown had the Taser in his hand. And so...and I...and I think that...the analysis, like you said, it's helpful, but I just...I mean, it's not clear. I mean, it's based on a legal opinion of an expert whether or not, you know, Brown was on the ground or whether it was up. It seems to say, according to the auto...autopsy report, that he was squatting or sitting on the ground, like that lady said. That seems the most logical, which would go along with what the...the civilian witnesses said and also what Officer Stucker said, because remember, he was squatted on the ground when he was hitting him with the ba...baton and then he heard the shots. But then the gun...it brings him to problem with what Elle...what Ellefson had said and that's kind of something that has to be dealt with, too.

And so, um, I think this is gonna be a discussion ahead. I mean, I did have some question about the briefing where...because it wasn't clear whether the...the...Cannon had said whether...whether

Stucker had hit the...hit him with the baton after he saw the Taser or whether it was before because in the briefing, it actually made it seem like it was before. And now, in this analysis, and I guess according to the statements, it was after.

So I just had some of these questions and I thought I would raise some of these issues.

Thank you.

VICE-CHAIR WARD – Dr. Bailey...

Dr. Ron Bailey

Yeah, Dr. Ron Bailey. I won't touch on Mr. Warnberg's scenario, which I thought was good. With the foundation, however, of hearing a portion of the tapes, as a medical doctor and community member, the question that I would pose to you is 'Did the officer / officers have any experience demanding first response to an individual with an acute psychotic break?' And I think this is critical, because, if you listen to the tapes closely, what we see is not only somebody who has a psychosis, but it seems as though, with ever command directed from the officers, there is a continued escalation of issues.

Thank you.

RPD Training

Deputy Chief John DeLaRosa introduced two members of RPD's Training Division: Lt. Vance Hardin and Sgt. Cliff Mason. Lt. Hardin updated the Commission on the status of RPD's training program.

Mary Shelton

Ms. Shelton noted that she didn't hear much about diversity training, but said it may be that that's being done through the Human Relations commissioners. She also had a number of other questions regarding:

- asked about POST requirements for Taser use
- the qualifications and screening procedures for Field Training Officers (FTO's)
- the training program for dealing with the mentally ill
- Watch Commander training and if it was extended to both lieutenants and sergeants
- pretext stop training during roll call

Dr. Ron Bailey

Dr. Bailey asked whether RPD has looked at how many individuals involved in use of force incidents has a background in the military and if preferential consideration is given to recruits with military backgrounds.

Dr. Bailey also said that the policing the mentally impaired is a "venue" by which the community can come together with RPD. He said that issues regarding the mentally impaired should not marginalize issues regarding those who are medically impaired. He noted that the last several officer-involved death cases had some common themes:

- all were impaired in some way
- disproportionate number were black
- all were "offender or presumed offenders who became victims"
- all are dead

Dr. Bailey believes that officers should be trained in dealing with the medical, as well as psychiatric issues and feels the curriculum should be broad.

Dr. Bailey also has concerns regarding training issues for first responders.

As Vice-Chair Ward prepared to discuss Item 7, Commissioner Percy noted the late hour and proposed that the remaining agenda items be held over to the next meeting.

After a brief discussion, Commissioner Percy made a motion to move the remaining portion of the agenda to the next regularly scheduled meeting. Commissioner Brewer seconded. Motion passed unanimously.

At this time, Vice-Chair Ward presented outgoing commissioner Bob Garcia with a plaque. Vice-Chair Ward expressed the Commission's appreciation for Mr. Garcia's 6-plus years of service on the Commission and to the City.

Adjournment

The Commission adjourned at 8:40 PM.

Respectfully submitted,



PHOEBE SHERRON
Sr. Office Specialist