



DenverDA

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May 12, 2006

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Roberto Gonzales, DOB 4/3/72, DPD#401022, FBI#880891LA8, in which Sergeant Rick Stern, #87032, Officer Andrew Richmond, #04005, and Officer James Medina, #99072, fired their weapons on May 6, 2006, at 4:58 p.m. at West 10th Avenue and Clay Way, Denver, Colorado.

Dear Chief Whitman:

On May 6, 2006, at about 4:56 p.m., Denver officers radioed the description of a stolen green Jeep Cherokee that had just driven by their location traveling northbound on Federal Boulevard at West 7th Avenue. A number of Denver officers began to respond to the general area in an effort to contact the stolen Jeep and its occupants. Within a minute of the radio transmission, officers aired seeing the stolen Jeep in the vicinity of 10th Avenue and Decatur Street. The Jeep was going eastbound on West 10th Avenue toward Clay Way at a high rate of speed. At Clay Way, the driver of the Jeep pulled a quick U-turn and stopped the Jeep facing westbound on West 10th Avenue parallel to the curb.

Sergeant Rick Stern, Officer James Medina, Officer Andrew Richmond and Sergeant Larry Subia had been responding from different locations, but arrived within seconds of the stolen Jeep pulling to the curb. Three of the officers arrived in separate marked police cars close in time to one another. Sergeant Subia arrived within seconds of these officers. As they each arrived, they got out of their police cars, drew their service pistols, and attempted to contact and contain the three occupants of the stolen Jeep. A number of other officers were converging on the scene based on the radio transmissions.

When the stolen Jeep stopped, an individual, later identified as Roberto Gonzales, quickly exited the Jeep from the front passenger seat and ran to the northeast of the Jeep. On the sidewalk, a few feet from the Jeep, Gonzales contacted an individual he had known for about two weeks who lived in the Sun Valley neighborhood.¹ This acquaintance (hereafter "P.R.") was walking down the

¹ In his video-taped statement to investigators he indicated that he had met Roberto Gonzales, who he called "Rico" (he was born in Puerto Rico), about two weeks ago. He said he did work on cars that Gonzales had at his residence. He said in two weeks Gonzales had come to his apartment about eight times to smoke crack cocaine. He said a couple of times he came

sidewalk with a female friend and had nothing to do with the stolen Jeep or the conduct of its three occupants. One of the other two occupants exited from the driver's seat of the Jeep. He was later identified as Michael Anthony Romero. A party later identified as Dale Edward Serratt remained in the passenger side back seat. Romero complied with officer commands and got face down on the ground on the south side of the Jeep by the driver's door. Romero remained in that position until arrested after the shooting.

Gonzales grabbed a hold of his acquaintance of two weeks and turned to position P.R. between the police officers and himself—as if to shield himself and his actions from the police. As he did so, he attempted to get P.R. to take the handgun he was holding in his left hand—saying: “Hold this! Hold this!” P.R. refused to do so, but Gonzales continued to attempt to put the gun into P.R.'s pocket or waistband. As this was occurring the three officers had fanned out in an effort to confront and contain Gonzales' movement. The officers loudly and repeatedly ordered Gonzales to “put the weapon down” and “get down on the ground.” In these brief seconds, P.R. resisted Gonzales' efforts to have him take the gun—instead P.R. put his hands in the air. With hands raised in the air, P.R. moved swiftly away from Gonzales. P.R. said the police commands were yelled at least ten times.

Sergeant Stern estimated he was within six feet to the northwest of Gonzales. Officer James Medina was about the same distance from Gonzales but was off to the right of Sergeant Stern. Both officers were in positions without cover. Officer Andrew Richmond was to the southeast of the Jeep. The officers were positioned so as not to be in a crossfire. The officers all continued to shout commands to “put the weapon down” and “get down on the ground.” During the entire confrontation, Gonzales never gave any indication of an intention to comply. He continued his non-compliant resistant behavior while armed with the handgun. When P.R. separated from him, instead of dropping the handgun from his left hand and cell phone from his right hand, Gonzales instead abruptly moved in a threatening manner with the handgun in the direction of Sergeant Stern. Officer Medina, Officer Richmond and Sergeant Stern all fired shots at Gonzales in rapid succession in response to Gonzales' actions.

Gonzales fell wounded to the ground. He was lying in a partial fetal position with his head to the north and feet to the south. His hands were in front of his body. His cell phone was recovered near his hands. Sergeant Subia was getting out of his police car just as the shots were being fired. He drew his firearm, but did not fire any shots. The firing of shots by the three officers ended very quickly. As Sergeant Subia ran around the north side of the Jeep directly to the position of Gonzales, he was radioing to the Dispatcher that an officer-involved shooting had occurred and that an ambulance was needed Code-10. It was 4:58 p.m.—less than 3 minutes after the initial airing of the stolen Jeep. Sergeant Subia told investigators that as he got to Gonzales he saw the cell phone by his hands which were in front of his body. He then saw the black handgun on the ground in the area of Gonzales' partially bent knees. He said he kicked the gun a few feet to the position on the sidewalk where it was later recovered by crime scene investigators—approximately four feet from Gonzales'

during the day, but usually he would come at odd hours. He said that when Gonzales smoked crack he became very paranoid and was very jittery. He also stated that Gonzales used “crystal meth” and drank alcohol. He indicated that Gonzales had firearms on him every time he saw him. He said he would have as many as three guns on him at one time. He liked to show them. He said one of the guns was a small White Derringer with an over-under barrel. The other two were described as larger black semi-automatic pistols. He said he thought those guns might not be real firearms.

feet. He asked another responding officer to stand over and guard the handgun. The kicking of the gun was also independently observed by a lay witness from his nearby residence.

Immediately after the shooting, Dale Sirratt was removed from the back seat of the Jeep by Officer James Medina. He was placed on the ground and handcuffed. P.R., who had moved away from Gonzales, had immediately gone face down on the ground when the shots were fired. He was in a position east of the Jeep. He, too, was handcuffed until responding officers could sort things out.

Investigators obtained written and/or video-taped statements from all non-shooting witness officers. Written statements were taken from numerous lay witnesses and video-taped statements were taken from ten of these individuals. All three officers who fired their weapons gave voluntary sworn videotape statements to investigators. In accordance with protocol, the officers were separated immediately after the shooting and were sequestered at police headquarters until their statements were taken. Because of the large number of video-taped statements taken from lay witnesses and non-shooting officers, these three officers waited, sequestered, for more than eight hours before they were able to give their statements. We thank them and all of the witnesses for their cooperation and patience in this investigation. The video-taped statements were concluded at 3:00 a.m.

The final moments of the confrontation, as described by the shooting officers and some of the witnesses, is presented below in synopsis form.

Sergeant Rick Stern stated in pertinent part in his sworn videotaped statement to investigators that the suspect had something in his left hand ... he ordered him to get on the ground ... the other guy put his hands up and started backing away ... he was trying to get away from the suspect ... the suspect had something in his left hand ... he brought it up ... I thought he was going to shoot me ... I fired ... I heard some other shots ... he went down almost immediately ... I was walking up to him ... I saw a silver cell phone in his hand area ... I thought the gun was big ... he had to have a gun ... then I saw the gun by his feet ... Sergeant Subia was there almost immediately. Sergeant Stern then covered certain aspects again by saying ... the suspect stopped when I yelled at him ... then he was trying to hand the guy something ... the guy put his hands up and started to walk away from the suspect ... it was like the suspect was trying to give him something ... the White guy separates ... that is when the suspect came up on me with the gun ... we were about 5 or 6 feet apart ... he had what turned out to be a cell phone in his right hand ... gun was in his left hand. Sergeant Stern went on to say the White guy is saying ... "Hey, I don't want that! I don't want that!" ... he is walking away from the suspect with his hands up in the air ... I was yelling as loud as I could ... I pointed my gun at him ... he refused to do anything I was telling him ... I was shouting ... I repeated 7 or 8 times to get down on the ground ... at the time I fired the weapon I could see a large black object in his left hand consistent with being a gun.

In his sworn videotaped statement to investigators, Officer Andrew Richmond described the final moments in this way. He said the Black male was facing Sergeant Stern ... the Black male is doing something to the White guy ... the White guy and the Black guy separated ... I saw a black gun in his left hand down to his side ... then the Black guy came up with the gun toward Sergeant Stern ... shots were fired ... I also fired shots ... Sergeant Stern then directed his attention toward the Black guy ... I directed my attention to the White guy and told him to get down ... then I put my attention toward the driver ... other officers were there immediately ... all this happened fairly quickly. Officer

Richmond went on to say that the Black male brought his gun up so quickly on Sergeant Stern ... I did not know whether he had shot at Sergeant Stern ... we were uncertain who else was a threat to us ... eventually everyone seemed to be in custody ... I walked up to Sergeant Stern to see if he was okay. Officer Richmond also stated that no conversation was heard from the White and Black guys ... Sergeant Stern was yelling ... "Stop" ... "Show your hands" ... the Black guy was not complying ... the Black guy was actually reaching to his left where Sergeant Stern could not see his hands ... it was suspicious conduct ... it was like someone trying to hide something or reach for something ... he was not complying with what was being asked ... then I see the gun in his left hand ... Sergeant Stern also commanded the party to ... "Show me your hands" ... Sergeant Stern was within 20 feet of him ... the Black male looked over at me and then over at Sergeant Stern ... the Black male brings the gun up at Sergeant Stern ... I made the decision to shoot ... it happened so quickly ... I didn't know if he had fired ... I wanted to give Sergeant Stern a chance to live.

In his sworn statement, Officer James Medina described the final moments as follows. He said he sees a Black male and a White male ... Sergeant Stern orders them to get down ... I yell "Get down on the ground" ... they did not comply ... the Black male looked at Sergeant Stern ... they were standing like they were having a conversation amongst themselves ... Sergeant Stern orders ... "Get on the ground" ... their backs were to us ... the Black male was facing Sergeant Stern ... I thought the Black guy was going to run ... when he wheels around he pulls out a gun ... I go "Drop it. Drop it." ... I don't know who fires first, but I fired ... I see the White guy get down on the ground ... I see Sergeant Stern going toward the Black guy who is down on the ground. Officer Medina continued by saying the Black male did not comply with commands ... White male went to the ground when the Black male wheeled around ... Black male had black object in his right hand ... Sergeant Stern yells "Gun. Drop it." ... I see Black male take one step toward Sergeant Stern ... I don't think the Black male even knew I was there ... his eyes looked white ... I thought he was going to kill Sergeant Stern.

In his video-taped statement, M. S.,² age 10, in pertinent part told investigators that he was by his front door near where the shooting occurred. He said it was the closest he had ever been to a gun and that scared him. He said, "I saw a gun pointing at a cop ... saw a guy holding a gun at a cop ... I closed the door and heard boom boom boom boom. I saw the guy—he was pointing the gun at the policeman." (He described and drew this on the SmartBoard photo of the scene.) As to the police officer, from where he was he said he could not see the policeman's whole body, but saw part of it and the tip of his gun. When he opened the door after the shots stopped, he saw two guys down in handcuffs. He said he was scared and felt like he was going to pass out.

In his video-taped statement, P.R. told investigators in pertinent part that The Jeep parked ... Rico (this is what he called Roberto Gonzales) jumped out of the Jeep ... he thinks Rico was in the front passenger seat ... Rico for sure was not driving ... jumped out like he was in a hurry ... he came running after me ... I saw all the police cars coming down the street from Federal ... a whole lot of them ... lights and sirens ... Rico comes around and he had a hold of my shirt to put me in between him and the police ... he had a gun ... he kept saying "Hold this! Hold this!" ... the police were still coming ... he was trying to hide the gun from them ... "Hold this! Hold this!" ... I wasn't touching it ... the officer yelled "Stop! Drop the weapon! Drop the weapon!" ... I

² We are not using the names of "M.S.," "N.F.," or "the acquaintance – "P.R." in this letter. This reference by initials, however, will provide for easy verification when the investigative file becomes open at the conclusion of the administrative review of the case.

put my hands up ... I just stood there ... Rico was trying to put the gun on me ... he was trying to get me to take it ... the officers yelled "Hit the ground! Hit the ground! Drop the weapon!" ... Rico didn't say anything ... I started walking away ... I went about 5 steps before officers shot ... Rico still had the gun ... I didn't see Rico when I was walking away ... I heard the shots. P.R. went on to say ... I put my hands up and started walking away ... I started following N.F. (this is the female friend he had been walking with) ... that is when the shooting started ... the officers were yelling continuously ... "Get down! Get down! Drop the weapon!" ... I put my hands up so they could see what I was doing ... I walked away from Rico ... I didn't want to get hurt ... I did not see Rico once I walked away ... the shots were fired ... I got down on the ground ... I was still standing when the gunshots occurred ... I then got down ... I did not actually see which officers fired ... I was then put in handcuffs and taken down to the police station.

In his video-taped statement, Dale Edward Serratt, told investigators in pertinent part that he was still sitting in the back passenger seat and could not see Gonzales once he exited the Jeep. He heard, "Get down on the ground ... Get down on the ground ... that's the one with the gun." Then he heard "pop—pop—pop—pop—pop—pop." He said everything happened very fast. Serratt said he was coming down off of speed at the time. He told investigators that he does "Meth" and sells it to support his habit. He had \$621 in cash on him at the time of his arrest and said the money came from selling drugs. He called Gonzales—"Rico" and said that he carried as many as three guns at a time. He said he always carried guns—sometimes they were real and sometimes they were fake guns. When asked why Gonzales carried the guns, he responded it was "because he is crazy." He said Gonzales carried them in his waistband and pockets.

In his video-taped statement, Michael Anthony Romero told investigators in pertinent part that he was driving the Jeep. Gonzales (he also called him "Rico") and Serratt were stealing items. They were going to sell the items to get money to, among other things, buy drugs. They were going to the area of West 10th Avenue and Clay Way for Gonzales to get some "Crack" cocaine. When Romero pulled up to the curb and put the Jeep in park, he heard Gonzales say "are those the cops." Gonzales then said "run." He said it all happened incredibly fast. He said, "Before I knew it a Black officer was in my face with a gun pointed at me—right by the driver's door. He didn't see where Gonzales was because he was focused on the Black officer. He stated, "I just heard pop pop pop pop pop—and screaming Down—Down." He, too, told investigators that Gonzales always carried guns. He stated, "He carried toy guns—he also carried real guns—all of the toy guns looked real—he always had a toy gun with him—he likes to flash them but not so you can tell for sure whether they are real or fake." He also said that "Rico does crack—meth—marijuana—alcohol." He stated that Gonzales calls himself—"Rico Act"—like the law.³

Gonzales was transported to Denver Health Medical Center. He was pronounced dead by Dr. John Moore at 5:23 p.m. on May 6, 2006. In the morning of May 8, 2006, Dr. James Wahe performed an autopsy on the body of Gonzales. The cause of death was determined to be the result of the gunshot wounds. Gonzales had the following gunshot wounds associated with the shooting: (1) to the inside of the right forearm (bullet recovered); (2) to the head in the area of the left ear (bullet recovered); (3) to the rear of the left arm—then traveling laterally through the shoulder—then lodging in his neck (bullet recovered); and (4) to the stomach (bullet recovered). One bullet was recovered

³ He is referring to the "Racketeer Influenced and Corrupt Organizations Act of 1970." According to Romero this is why he called himself "Rico Act."

from an area not associated with the wounds from this shooting. It was a bullet that remained in his body from being previously shot.⁴

Pursuant to the officer-involved shooting protocol, Detective Frank Kerber, D.P.D. Crime Lab firearms examiner, took possession of the service pistols of the three officers after the shooting. His initial examination of the weapons determined that Sergeant Rick Stern fired 3 shots from his 9 mm Glock-17 semi-automatic pistol. Officer Andrew Richmond fired 9 shots from his 9mm Glock-17 semi-automatic pistol. Both these weapons have a magazine capacity of 17 rounds. Both weapons were being carried with the magazine fully loaded and an additional round chambered—a total of 18 rounds in the weapon. Officer James Medina fired 4 shots from his .45 caliber Glock-37 semi-automatic pistol. The weapon has a magazine capacity of 10 rounds, but Officer Medina carries it with 9 rounds in the magazine and an additional round in the chamber. A total of 16 shots were fired by the three officers.

The crime scene investigation was conducted by the Denver Police Department Crime Lab under the direction of Commander Gregory LaBerge. Sergeant Kevin Frazer and his personnel completed a thorough and professional crime scene processing. In addition to the physical evidence associated with Gonzales, including the cell phone and the black handgun, crime lab personnel searched for and recovered all 16 shell casings from the rounds fired by the three officers—some had fallen or were blown down into a street drain. They also tracked and identified bullet strikes from shots that did not strike and remain in Gonzales. And, they recovered some of those bullets. All available evidence was located, collected and retained for the case investigation.

Detective Edward Frushour, D.P.D. Crime Lab firearms examiner, examined the four bullets recovered from Gonzales' body at autopsy and made the following preliminary determination. The bullets and fragments associated with this shooting were consistent with 9mm ammunition. None of the bullets recovered at autopsy are consistent with .45 caliber ammunition. Therefore, the four shots that struck Gonzales were fired by Sergeant Stern and/or Officer Richmond who were firing 9mm rounds.

It was determined that the black handgun wielded by Gonzales and recovered at the scene was a replica handgun that had the appearance of a semi-automatic pistol. The replica handgun actually has moving parts. Without close inspection it would be impossible for the officers to know that this was a replica handgun incapable of being fired.⁵

Roberto Gonzales, 4/3/72, has an extensive criminal record that includes arrests for assault (multiple arrests), menacing, harassment, domestic violence, kidnapping, disturbance, disorderly intoxication, false reporting, criminal mischief, theft, motor vehicle theft, theft by receiving, and drug offenses. He has two felony convictions and was sentenced to the Department of Corrections for 6 years on a 1997 conviction for Possession of Controlled Substance with Intent to Distribute. Gonzales has claimed gang membership with the Latin Kings and has a tattoo "Latin Kings." His moniker is "Psycho." **Michael Anthony Romero**, 8/15/73, has a criminal record that includes arrests for assault, threats, obstructing police, disturbance, false information, trespassing, criminal mischief, and

⁴ Family members informed Dr. Wahe that this bullet was the result of a prior self inflicted gunshot wound.

⁵ See "Attachment 1"—an actual size photo of the replica handgun wielded by Gonzales.

multiple drug offenses. **Dale Edward Sirratt**, 9/20/84, has a criminal record that includes arrests for assault, disturbance, trespassing, illegal use of credit cards, and multiple motor vehicle thefts. Both also have felony convictions. The investigation of the motor vehicle theft of the Jeep is continuing at this time.

The above recitation of the event represents the probable sequence of the confrontation and shooting based on the totality of the statements and evidence produced in the investigation. As is normally the case when there are numerous witnesses to an event, who make their observations from a variety of locations and see varying degrees of the event, there were differences in the witness perceptions in this case. Some of the witnesses did not see Gonzales' gun at all—others did, including the officers, P.R., M.S.—the 10 year old boy, and other witnesses who were in a position to observe. His possessing a gun is also supported by the independent statements of Michael Romero, Dale Sirratt, and P.R. describing how Gonzales always has a gun or guns on him, including a gun of this description. The witness statements combined with the physical evidence makes it clear that Gonzales possessed the black handgun. At least one witness had the handgun in Gonzales' right hand—most had it in his left hand. One of the three shooting officers thought it was in his right hand. The witness statements combined with the physical evidence weigh heavily in support of the gun being in his left hand and the cell phone being in his right hand. Some of the witnesses said they did not see Gonzales make any movements before the officers fired—others did, including the officers, M.S.—the 10 year old boy, and a number of other witnesses who provided various descriptions of Gonzales' actions. The clear weight of the evidence supports the conclusion that Gonzales moved abruptly and raised the handgun up at Sergeant Stern. All of the witnesses heard loud shouting. Some did not hear exactly what was being said—others did, including the officers, P.R., and a number of other witnesses. The clear weight of the evidence indicates the statements, “get down on the ground” and “drop the weapon,” were made repeatedly by the officers. It is also the logical reaction and response by a police officers confronted by a handgun to say—“drop the weapon.” And, significantly, not a single witness says Gonzales complied with the repeated lawful commands of the officers—by dropping the gun and/or cell phone and getting down on the ground. Instead, by his actions, he forced the officers to make a split-second life-or-death decision. Therefore, the clear weight of the evidence supports the conclusion that the event probably happened as described above.

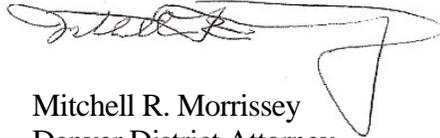
Based on the totality of the facts developed in this investigation, the shots fired by the three officers were not criminal conduct under C.R.S. 18-1-707 (2) and 18-1-704 (1). We could not prove beyond a reasonable doubt that it was unreasonable for the three officers to perceive that Gonzales' conduct posed an imminent threat to them when they fired the shots. The facts developed in the investigation support the conclusion that the officers had no reason to believe the black handgun was incapable of being fired. A police officer has a right to act on reasonable appearances. Under the specific facts of this case, the three officers had every reason to believe Gonzales was capable of killing them with the gun. The District Attorney's authority and responsibility in these cases is not to determine whether an officer should or should not shoot in a given situation, but rather to determine if the act is criminal if an officer does elect to shoot and wounds or kills a person. Under the specific facts of this case, no criminal charges are fileable and provable against the officers in the shooting death of Gonzales.

The attached document entitled *Officer-Involved Shooting Protocol 2006* is incorporated by this reference. The following pertinent statement is in that document: “*In most officer-involved*

shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly.” In this case, the facts and decision are sufficiently clear that this letter can be released at this time. Although there is still testing and documentation to be completed, it does not involved results that would impact this decision. That information can be provided in the administrative review of the shooting.

The Denver Police Department is the custodian of records related to this case. The case investigation documents in our possession will be open for in-person review at our office at the conclusion of the Manager of Safety and Denver Police Department’s administrative investigation and review of this shooting, if the City fails to open its criminal case investigative file for review at that time. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,



Mitchell R. Morrissey
Denver District Attorney

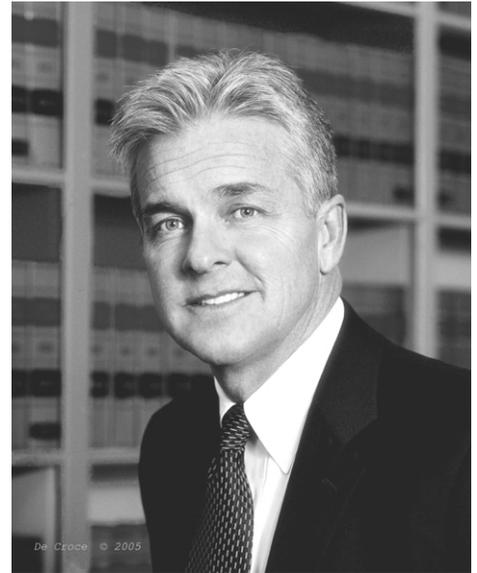
cc: Sergeant Rick Stern, Officer Andrew Richmond, Officer James Medina; Jeff Clayton, Attorney at Law; John W. Hickenlooper, Mayor; All City Council Members; Alvin J. LaCabe, Jr., Manager of Safety; Cole Finegan, Denver City Attorney; Marco Vasquez, Deputy Chief; Michael Battista, Deputy Chief; Dan O’Hayre, Division Chief; Dave Fisher, Division Chief; Steve Cooper, Division Chief; Mary Beth Klee, Division Chief; Gregory LaBerge, Crime Lab Commander; John Burbach, Captain; Jon Priest, Lieutenant, Homicide; Jim Haney, Lieutenant; Michael Martinez, Detective, Homicide; Randy Stegman, Detective, Homicide; John Lamb, Commander, Civil Liability; Chuck Lepley, First Assistant District Attorney; Lamar Sims, Chief Deputy District Attorney; Doug Jackson, Chief Deputy District Attorney; Henry R. Reeve, General Counsel, Deputy District Attorney; Justice William Erickson, Chair, The Erickson Commission; Richard Rosenthal, Office of the Independent Monitor.



**Attachment 1: The replica handgun wielded by Roberto Gonzales.
This photo represents the actual size of the gun.**



OFFICER-INVOLVED SHOOTING PROTOCOL 2006



Mitchell R. Morrissey
Denver District Attorney

The Denver District Attorney is a State official and the Denver District Attorney's Office is a State agency. As such, although the funding for the operations of the Denver District Attorney's Office is provided by the City and County of Denver, the Office is independent of City government. The District Attorney is the chief law enforcement official of the Second Judicial District, the boundaries of which are the same as the City and County of Denver. By Colorado statutory mandate, the District Attorney is responsible for the prosecution of violations of Colorado criminal laws. Hence, the District Attorney has the authority and responsibility to make criminal charging decisions in peace officer involved shootings.

The Denver Police Department was created by the Charter of the City and County of Denver. Under the Charter, the police department is overseen by the Office of the Denver Manager of Safety. The Manager of Safety and the Chief of Police are appointed by and serve at the pleasure of the Mayor of Denver. The District Attorney has no administrative authority or control over the personnel of the Denver Police Department. That authority and control resides with City government.

When a peace officer shoots and wounds or kills a person in Denver, Colorado, a very specific protocol is followed to investigate and review the case. Officer-involved shootings are not just another case. Confrontations between the police and citizens where physical force or deadly physical force is used are among the most important events with which we deal. They deserve special attention and handling at all levels. They have potential criminal, administrative, and civil consequences. They can also have a significant impact on the relationship between law enforcement officers and the community they serve. It is important that a formal protocol

be in place in advance for handling these cases. The following will assist you in understanding the Denver protocol, the law, and other issues related to the investigation and review of officer-involved shootings.

For more than a quarter century, Denver has had the most open officer-involved shooting protocol in the country. The protocol is designed to insure that a professional, thorough, impartial, and verifiable investigation is conducted and that it can be independently confirmed by later review. The fact that the investigative file is open to the public for in-person review at the conclusion of the investigation and review process, permits not only formal legal reviews to occur, but also allows for any citizen to review the case. This, perhaps more than any other single factor, helps to insure that the best possible investigation is conducted by all involved parties.

When an officer-involved shooting occurs, it is immediately reported to the Denver police dispatcher, who then notifies all persons on the call-out list. This includes the Division Chief of Investigations, First Assistant District Attorney and Chief Deputy District Attorney, Division Chief of Patrol, Captain of Crimes Against Persons Bureau, Homicide Unit personnel, Director of the Crime Lab, Crime Lab Technicians, and others. These individuals respond first to the scene and then to DPD headquarters to take statements and conduct other follow-up investigation. The Denver District Attorney, Manager of Safety, and Chief of Police are notified of the shooting and may respond.

The criminal investigation is conducted under a specific investigative protocol with direct participation of Denver Police Department and Denver District Attorney personnel. The primary investigative personnel are assigned to the

Homicide Unit where the best resources reside for this type of investigation. The scope of the investigation is broad and the focus is on all involved parties. This includes the conduct of the involved officer(s) and the conduct of the person who is shot. Standard investigative procedures are used at all stages of the investigation, and there are additional specific procedures in the Denver Police Department's Operations Manual for officer-involved shootings to further insure the integrity of the investigation. For example, the protocol requires the immediate separation and sequestration of all key witnesses and all involved officers. Involved officers are separated at the scene, transported separately by a supervisor to police headquarters, and sequestered with restricted visitation until a formal voluntary statement is taken. Generally the officers speak with their attorney prior to making their voluntary statement. A log is kept to document who has contact with the officer. This is done to insure totally independent statements and to avoid even the appearance of collusion.

In most cases, the bulk of the criminal phase of the investigation is concluded in the first twelve to twenty-four hours. Among other investigative activities, this includes a thorough processing of the crime scene; a neighborhood canvass to identify all possible witnesses; the taking of written statements from all witnesses, and video-taped statements from all key witnesses and the involved officer(s). The involved officer(s), like any citizen, have a Constitutional Fifth Amendment right not to make a statement. In spite of this fact, Denver officers have given voluntary sworn statements in every case, without exception, since 1979. Since November of 1983, when the videotape-interview room was first used, each of these statements has been recorded on videotape. *No other major city police department in the nation can make this statement.*

Officers are trained to properly secure their firearm after an officer-involved shooting. The protocol provides for the firearm to be taken from the officer by crime lab personnel for appropriate testing. The officer is provided a replacement weapon to use pending the completion of the testing. The protocol also allows for any officer to voluntarily submit to intoxicant testing if they chose. The most common circumstance under which an officer might elect to do so would be in a shooting while working at an establishment that serves alcohol beverages. Compelled intoxicant testing can be conducted if there are indications of possible intoxication and legal standards are met.

The Denver Chief of Police and Denver District Attorney commit significant resources to the investigation and review process in an effort to complete the investigation as quickly as practicable. There are certain aspects of the investigation that take more time to complete. For example, the testing of physical evidence by the crime lab—firearm examination, gunshot residue or pattern testing, blood analyses, and other testing commonly associated with these cases. In addition, where a death occurs, the autopsy and autopsy report take

more time and this can be extended substantially if it is necessary to send lab work out for very specialized toxicology or other testing. In addition to conducting the investigation, the entire investigation must be thoroughly and accurately documented.

Officer-involved shooting cases are handled by the District Attorney, First Assistant District Attorney, and Chief Deputies District Attorney specifically trained for these cases. At least two of these district attorneys respond to each officer-involved shooting. They are notified at the same time as others on the officer-involved shooting call-out list and respond to the scene of the shooting and then to police headquarters to participate in taking statements. They are directly involved in providing legal advice to the investigators and in taking video-taped statements from citizens and officer witnesses, and from the involved officer(s). They continue to be involved throughout the follow-up investigation.

The Denver District Attorney is immediately informed when an officer-involved shooting occurs, and if he does not directly participate, his involved personnel advise him throughout the investigative process. It is not unusual for the District Attorney to personally respond and participate in the investigation. At the conclusion of the criminal investigation the District Attorney personally makes the filing decision.

If criminal charges are not filed, a brief decision letter describing the shooting is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, other appropriate persons, and the media. The letter is intentionally brief to avoid in any way impacting the integrity and validity of the Denver Police Department administrative investigation and review, which follows the criminal investigation and review. This represents a 2005 change from the very thorough decision letters that have previously been written by the District Attorney in these cases.

This change has been made because the Denver Manager of Safety now writes an exhaustive letter at the conclusion of the administrative review of the shooting. The Manager of Safety's letter can include additional facts, if any, developed during the administrative investigation. Therefore, the Manager of Safety's letter can provide the most comprehensive account of the shooting. In contrast to the criminal investigation phase, the administrative process addresses different issues, is controlled by less stringent rules and legal levels of proof, and can include the use of investigative techniques that are not permissible in a criminal investigation. For example, the department can, under administrative rules, order officers to make statements. This is not permissible during the criminal investigation phase and evidence generated from such a statement would not be admissible in a criminal prosecution.

The Manager of Safety has taken a more active role in officer-involved shooting cases and has put in place a more thorough administrative process for investigating, reviewing, and responding to these cases. The critical importance of the administrative review has been discussed in our decision letters and enclosures for many years.⁶ As a result of the positive changes the Manager of Safety has now instituted and his personal involvement in the process, we will not open the criminal investigative file at the time our brief decision letter is released. Again, we are doing this to avoid in any way impacting the integrity and validity of the Manager of Safety and Denver Police Department ongoing administrative investigation and review. After the Manager of Safety has released his letter, we will make our file open for in-person review at our office by any person, if the City fails to open its criminal-case file for in-person review. The District Attorney copy of the criminal-case file will not, of course, contain any of the information developed during the administrative process. The City is the Official Custodian of Records of the original criminal-case file and administrative-case file, not the Denver District Attorney.

THE DECISION

By operation of law, the Denver District Attorney is responsible for making the criminal filing decision in all officer-involved shootings in Denver. In most officer-involved shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly.

The same standard that is used in all criminal cases in Denver is applied to the review of officer-involved shootings. The filing decision analysis involves reviewing the totality of the facts developed in the criminal investigation and applying the pertinent Colorado law to those facts. The facts and the law are then analyzed in relation to the criminal case filing standard. For criminal charges to be filed, the District Attorney must find that there is a reasonable likelihood that all of the elements of the crime charged can be proven beyond a reasonable doubt, unanimously, to twelve jurors, at trial, after considering reasonable defenses. If this standard is met, criminal charges will be filed.

One exception to the Denver District Attorney making the filing decision is if it is necessary to use the Denver Statutory Grand Jury. The District Attorney will consider it appropriate to refer the investigation to a grand jury when it is necessary for the successful completion of the

⁶ See the "Conclusion" statement in the "Decision Letter" in the December 31, 1997, shooting of Antonio Reyes-Rojas, where we first pointed out issues related to the importance of the Administrative review of officer-involved shootings. Subsequent letters continued to address this issue.

investigation. It may be necessary in order to acquire access to essential witnesses or tangible evidence through the grand jury's subpoena power, or to take testimony from witnesses who will not voluntarily cooperate with investigators or who claim a privilege against self-incrimination, but whom the district attorney is willing to immunize from prosecution on the basis of their testimony. The grand jury could also be used if the investigation produced significant conflicts in the statements and evidence that could best be resolved by grand jurors. If the grand jury is used, the grand jury could issue an indictment charging the officer(s) criminally. To do so, at least nine of the twelve grand jurors must find probable cause that the defendant committed the charged crime. In order to return a "no true bill," at least nine grand jurors must vote that the probable cause proof standard has not been met. In Colorado, the grand jury can now issue a report of their findings when they return a no true bill or do not reach a decision—do not have nine votes either way. The report of the grand jury is a public document.

A second exception to the Denver District Attorney making the filing decision is when it is necessary to have a special prosecutor appointed. The most common situation is where a conflict of interest or the appearance of impropriety is present. As an example, if an officer involved in the shooting is related to an employee of the Denver District Attorney's Office, or an employee of the Denver District Attorney's Office is involved in the shooting. Under these circumstances, there would exist at a minimum an appearance of impropriety if the Denver District Attorney's Office handled the case.

THE COLORADO LAW

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and causing injury or death to another human being is generally prohibited as assault or murder in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force is justified. As there is generally no dispute that the officer intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Section 18-1-707 of the Colorado Revised Statutes provides that while effecting or attempting to effect an arrest, a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. Therefore, the question presented in most officer-involved shooting cases is whether, at the

instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person, was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for knowingly or intentionally shooting another, the state must prove beyond a reasonable doubt that the person doing the shooting either did not really believe he or another was in imminent danger, or, if he did hold such belief, that belief was, in light of the circumstances, unreasonable.

The statute also provides that a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to effect an arrest . . . of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon; or otherwise indicates, except through motor-vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In Colorado, deadly physical force means force the intended, natural, or probable consequence of which is to produce death and which does in fact produce death. Therefore, if the person shot does not die, by definition, only physical force has been used under Colorado law.

GENERAL COMMENTS

The following statement concerns issues that are pertinent to all officer-involved shootings.

The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called the split-second decision to shoot. It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a split-second decision to shoot. The split-second decision is generally made to stop a real or perceived threat or aggressive behavior by the citizen. It is this split-second time frame which typically defines the focus of the criminal-review decision, not the string of decisions along the way that placed the participants in the life-or-death final frame.

When a police-citizen encounter reaches this split-second window, and the citizen is armed with a deadly weapon, the circumstances generally make the shooting justified, or at the least, difficult to prove criminal responsibility under the criminal laws and required legal levels of proof that apply. The fact that no criminal charges are fileable in a given case is not necessarily synonymous with an affirmative finding of justification, or a belief that the matter was in all respects handled appropriately from an administrative viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt, unanimously, to a jury. This is the limit of the District Attorney's statutory authority in these matters. For

these reasons, the fact that a shooting may be "controversial" does not mean it has a criminal remedy. The fact that the District Attorney may feel the shooting was avoidable or "does not like" aspects of the shooting, does not make it criminal. In these circumstances, remedies, if any are appropriate, may be in the administrative or civil arenas. The District Attorney has no administrative or civil authority in these matters. Those remedies are primarily the purview of the City government, the Denver Police Department, and private civil attorneys.

Research related to officer-involved shootings indicates that criminal charges are filed in approximately one in five hundred (1-in-500) shootings. And, jury convictions are rare in the filed cases. In the context of officer-involved shootings in Denver (approximately 8 per year), this ratio (1-in-500) would result in one criminal filing in 60 years. With District Attorneys now limited to two 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 8 or more District Attorneys.

In Denver, there have been three criminal filings in officer-involved shootings in the past 40 years, spanning seven District Attorneys. Two of the Denver officer-involved shootings were the result of on-duty, work related shootings. One case was in the 1970s and the other in the 1990s. Both of these shootings were fatal. The cases resulted in grand jury indictments. The officers were tried and found not guilty by Denver juries. The third criminal filing involved an off-duty, not in uniform shooting in the early 1980s in which one person was wounded. The officer was intoxicated at the time of the shooting. The officer pled guilty to felony assault. This case is mentioned here, but it was not in the line of duty and had no relationship to police work. In 2004, an officer-involved shooting was presented by the District Attorney to the Denver Statutory Grand Jury. The Grand Jury did not indict. A brief report was issued by the Grand Jury.

Based on the officer-involved shooting national statistics, there is a very high likelihood that individual District Attorneys across the country will not file criminal charges in an officer-involved shooting during their entire tenure. It is not unusual for this to occur. In Denver, only two of the past seven District Attorneys have done so. This, in fact, is statistically more filings than would be expected. There are many factors that combine to cause criminal prosecutions to be rare in officer-involved shootings and convictions to be even rarer. Ultimately, each shooting must be judged based on its unique facts, the applicable law, and the case filing standard.

The American Bar Association's *Prosecution Standards* state in pertinent part: "A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction. In making the decision to

prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions. Among the factors the prosecutor may properly consider in exercising his or her discretion is the prosecutor's reasonable doubt that the accused is in fact guilty." The National District Attorneys Association's *National Prosecution Standards* states in pertinent part: "The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial. The prosecutor should not attempt to utilize the charging decision only as a leverage device in obtaining guilty pleas to lesser charges." The standards also indicate that "factors which should **not** be considered in the charging decision include the prosecutor's rate of conviction; personal advantages which prosecution may bring to the prosecutor; political advantages which prosecution may bring to the prosecutor; factors of the accused legally recognized to be deemed invidious discrimination insofar as those factors are not pertinent to the elements of the crime."

Because of the difference between the criminal, administrative, and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three uniquely different arenas. While criminal charges may not be fileable in a case, administrative action may be very appropriate. The legal levels of proof and rules of evidence that apply in the criminal-law arena are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the split-second decision to shoot are most effectively addressed by the Denver Police Department through the Use of Force Review Board and the Tactics Review Board process and administrative review of the shooting.

The administrative-review process, which is controlled by less stringent legal levels of proof and rules than the criminal-review process, provides both positive remedial options and punitive sanctions. This process also provides significantly broader latitude in accessing and using information concerning the background, history, and job performance of the involved officer. This type of information may have limited or no applicability to the criminal review, but may be very important in making administrative decisions. This could include information concerning prior officer-involved shootings, firearm discharges, use of non-lethal force, and other conduct, both positive and negative.

The Denver Police Department's administrative review of officer-involved shootings improves police training and performance, helps protect citizens and officers, and builds public confidence in the department. Where better approaches are identified, administrative action may be the

only way to effect remedial change. The administrative review process provides the greatest opportunity to bring officer conduct in compliance with the expectations of the department and the community it serves. Clearly, the department and the community expect more of their officers than that they simply conduct themselves in a manner that avoids criminal prosecution.

There are a variety of actions that can be taken administratively in response to the department's review of the shooting. The review may reveal that no action is required. Frankly, this is the case in most officer-involved shootings. However, the department may determine that additional training is appropriate for all officers on the force, or only for the involved officer(s). The review may reveal the need for changes in departmental policies, procedures or rules. In some instances, the review may indicate the need for changing the assignment of the involved officer, temporarily or permanently. Depending on the circumstances, this could be done for the benefit of the officer, the community or both. And, where departmental rules are violated, formal discipline may be appropriate. The department's police training and standards expertise makes it best suited to make these decisions.

The Denver Police Department's Use of Force Review Board and the Tactics Review Board's after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision to shoot is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high.

It is clear not every officer will handle similar situations in similar ways. This is to be expected. Some officers will be better than others at defusing potentially-violent encounters. This is also to be expected. To the degree officers possess skills that enhance their ability to protect themselves and our citizens, while averting unnecessary shootings, Denver will continue to have a minimal number of officer-involved shootings. Denver officers face life-threatening confrontations hundreds of times every year. Nevertheless, over the last 20 years officer-involved shootings have averaged less than eight annually in Denver. These numbers are sharply down from the 1970s and early 1980s when there were 12-to-14 shootings each year.

Skill in the use of tactics short of deadly force is an important ingredient in keeping officer-involved shootings to a minimum. Training Denver officers receive in guiding them in making judgments about the best tactics to use in various situations, beyond just possessing good firearms proficiency, is one of the key ingredients in minimizing

unnecessary and preventable shootings. Denver police officers handle well over a million calls for service each year and unfortunately in responding to these calls they face hundreds of life-threatening encounters in the process. In the overwhelming majority of these situations, they successfully resolve the matter without injury to anyone. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. It should be a part of the review of every officer-involved shooting, not just to look for what may have been done differently, but also to see what occurred that was appropriate, with the ultimate goal of improving police response.

RELEASE OF INFORMATION

Officer-involved shootings are matters of significant and legitimate public concern. Every effort must be made to complete the investigation and make the decision as quickly as practicable. The Denver Protocol has been designed to be as open as legal and ethical standards will permit and to avoid negatively impacting the criminal, administrative, or civil procedures. “Fair Trial—Free Press” standards and “The Colorado Rules of Professional Conduct” limit the information that can be released prior to the conclusion of the investigation.

Officer-involved shooting cases always present the difficult issue of balancing the rights of the involved parties and the integrity of the investigation with the public’s right to know and the media’s need to report the news. The criminal investigation and administrative investigation that follows can never keep pace with the speed of media reporting. This creates an inherent and unavoidable dilemma. Because we are severely restricted in releasing facts before the investigation is concluded, there is the risk that information will come from sources that may provide inaccurate accounts, speculative theories, misinformation or disinformation that is disseminated to the public while the investigation is progressing. This is an unfortunate byproduct of these conflicted responsibilities. This can cause irreparable damage to individual and agency reputations.

It is our desire to have the public know the full and true facts of these cases at the earliest opportunity, but we are required by law, ethics, and the need to insure the integrity of the investigation to only do so at the appropriate time.

CONCLUSION

The protocol that is used in Denver to investigate and review officer-involved shootings was reviewed and strengthened by the Erickson Commission in 1997, under the leadership of William Erickson, former Chief Justice of the Colorado Supreme Court. The report released after the 15-

month-long Erickson Commission review found it to be one of the best systems in the country for handling officer-involved shootings. We recognize there is no “perfect” method for handling officer-involved shooting cases. We continue to evaluate the protocol and seek ways to strengthen it.

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Denver District Attorney

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