



DenverDA

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October 11, 2013

Robert White
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting and wounding of Daniel Abeyta: DOB 11/6/83, DPD # 579555, in which Jerry Heimbigner, 90023, fired shots on August 16, 2013, at 2265 S. Irving Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting and wounding of Daniel Abeyta, in which shots were fired by Sergeant Jerry Heimbigner, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against Sergeant Heimbigner. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department, where non-criminal issues can be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this officer-involved shooting and the applicable Colorado law is attached to this letter.

STATEMENT OF FACTS

At 10:51:26 a.m. on August 16, 2013, the Denver Police 911 center received a call of a shooting at 2265 South Irving Street. The caller was later identified as Autume Marie Estrada. Within the first two minutes of a call that would last for more than 20 minutes, the call-taker received the following information:

- RP [REPORTING PARTY] WAS SHOT -BY HER HUSB[AND]
- HUSB ARMED WITH SHOTGUN
- UNK IF SUSP STILL IN THE HOUSE
- SUSP IS 32 YOA [YEARS OF AGE]
- RP IS HYSTERICAL . . .
- RP STATES [SUSPECT] LEFT OUT [THE] BACK DOOR
- SUSP TOOK SHOTGUN WITH HIM
- SUSP BACK - IS SHOOTING AGAIN - RP CAN HEAR HIM

CAD records show that at 10:56:48 “BLEEDING INSTRUCTIONS [WERE] GIVEN” to Ms. Estrada by the call-taker. Ms. Estrada’s husband, Daniel Abetya, had fired a shotgun at her feet from a short distance away, causing massive trauma to both lower extremities.¹

At 10:55:52, Mr. Henry Navaro called 911. He told the call-taker he was driving on Irving and as he passed between Evans and Harvard he saw a male party

Setting a propane tank in the middle of the road. And there was like two, he had like two [inaudible] rifles – I don’t know if they were real or play but he’s setting a propane tank in the middle of the road. . . there’s a black band around the propane tank. He had two M4 styled rifles – I don’t know if they were real or not – but I’ve never seen anyone setting a propane tank in the middle of the road like that.

Mr. Navaro described the individual as a Hispanic male, “green shirt -- t-shirt on, black shorts, short hair, medium build.” When the call-taker asked whether there was additional information he might provide, Mr. Navaro stated “propane tank [can] cause big explosion”. In short, the risks posed by the suspect’s actions were patent.

Other witnesses were also placing 911 calls and police were already responding to the scene when Mr. Navaro made his call (indeed, a siren can be heard in the background while he is talking to the call-taker).² Witnesses interviewed by investigators provided substantial information regarding Abeyta’s actions after he shot Autume Estrada and left her home. One such witness was Dora Urquida, who lived across the street from 2265 S. Irving Street. Ms. Urquida is a Spanish speaker and she provided video and written statements in Spanish. In her statement, as translated, Ms. Urquida states she looked out a window from her kitchen

And she saw a propane tank in the street. She saw her neighbor [Abeyta] standing in front of the yellowish house pointing a pistol at the house and he had 2 guns strapped over his shoulders. Then he shot at the door [of the “yellowish” house] and then he was talking on a phone. Then he went back to his house and another neighbor came outside and was trying to talk to him and calm him down. It didn’t work so the neighbor went back inside his house. Then the man went to his jeep and was grabbing a bag and he was yelling. After that he shot the propane tank and it went flying down the street.

The “yellowish” house described by Ms. Urquida was the home of Sandra Rosskill, 2275 S. Irving Street, Denver. What Ms. Urquida was unable to see from her vantage point was that Ms.

¹ Ms. Estrada is in obvious distress on the phone call and repeatedly pleads for help; her fear and pain are palpable. Ms. Estrada’s seven year old daughter, Danica Abetya, was in the house with her and her screams can be heard in the background. The 911 call-taker remained on the telephone with her, telling her how to care for her wounds until help arrived, telling her that help was coming and, essentially, providing her an emotional life-line. At about 20 minutes into the call, Ms. Estrada indicates she was losing consciousness. She then ceases responding to the call-takers questions. The listener can then hear her daughter crying and screaming “mom” and “mommy!” and pleading for her to respond as the call-taker attempts to keep Ms. Estrada talking. At about 22 minutes into the call, the listener can hear first responders entering the home and asking Danica “is that your mom.”

² At 10:56:21, Mr. Aaron Sandry called 911 from his car in the area of Evans and Irving Streets. He told the call-taker he saw a guy “standing in the road “he had, like, two rifles on him and he had propane tanks set up in the middle (unintelligible) road and it looks like he’s gonna blow it up.” A neighborhood resident, Jessa Abel, called at 10:58:21, and reported she heard screaming and saw someone in the street holding a rifle and yelling “I didn’t do anything.” She described the suspect as a Hispanic man in a green shirt and said his weapon “almost looks like an assault rifle.” Other witnesses provided similar information.

Rosskilly was standing by her front door. Investigators determined that Ms. Rosskilly was shot and killed by Abeyta when he fired the shot described by Ms. Urquida.³

At 10:51:27, the District 4 dispatcher aired she “need[s] a couple of cars, two-two-six-five South Irving, 2265 South Irving, report of a shooting.” Within seconds, several officers indicated they were starting that way. As they did so, the dispatcher provided additional information, including Abeyta’s name and description, the cars “associated” with him, the fact he left the house via the back door, and the further fact that he was “currently armed with a shotgun.” At 10:53:34, the dispatcher advised cars that the “complainant” was in the kitchen, the suspect had returned to the house and “he’s shooting.” The dispatcher also advised responding cars that there was a seven-year old female inside the house and “not sure” whether she was injured. Additional cars indicated they were responding and supervisors began the process of placing local schools on lockdown and cordoning off the area.

At 10:54:36, the first officer to arrive on scene, Officer James Lindel, 82057, aired the following transmission:

(Car 4)23B coming six . . . Code 6, I got a party in a blue shirt in the middle of the street, dark shorts, he’s pointing towards the west. O.K., he’s got propane tanks. Looks like he’s armed with a rifle! Party’s armed with a long gun – all officers be aware -- have the, uh, fire department back off. They’re within his range. Uh, white male, armed with a rifle. Looks like two propane tanks in the middle of the street. ...We need to get Irving [Street] shut down. No north, uh correction, southbound traffic from Evans.

Officer Lindel then advised the dispatcher and arriving cars of the need to shut down Irving Street at Harvard Street for northbound traffic. The 2200 block of South Irving was now locked down. After assuring the inner perimeter was secured, Officer Lindel backed off so as to be out of range and began diverting traffic.

As officers were establishing the perimeter, an officer warned other officers they were in range and then stated “we’re going to need long guns⁴ in every position we’ve got available right now, um, he’s pacing back and forth.” A supervisor then asked the dispatcher to use the reverse 911 alert system to warn residents in the 2200 to 2400 block of South Irving Street to remain in their homes. Supervisors also verified that officers from other Districts and the Metro-Swat Unit were responding to assist. Car 420A, Sgt. James Gose, 78040, then asked whether any officers carrying long guns had arrived on scene, stating “I need a long gun to come to Harvard [Street] and then come along the, uh, face of the houses on the east side of the street. We have a brick wall, here, they can, uh, stage behind.” This transmission was aired beginning at 10:59:24.

At 11:00, Lt. Dikran Kushdilian, car 4200, assumed the role of Incident Commander. Lt. Paul Jimenez, car 4100, was also on scene as a supervisor as was District Four Commander William Nagel. Just after 11:00, the dispatcher advised officers on scene that Ms. Estrada’s seven-year old daughter indicated that Abeyta had “said he wanted to have a shoot-out with officers.” At 11:02, an unknown officer aired Abeyta was “pointing the gun eastbound.” The dispatcher repeated this information and then the officer added “he just fired a round.” Abeyta had fired a rifle round at one of the propane

³ As the prosecution of Abeyta is pending, we will not discuss here the firearms examiners reports upon which investigators, in part, relied. *See*, Rule 3.6, Colorado Rules of Professional Conduct.

⁴ An AR15 or “MP15” .223 caliber urban assault rifle.

tanks. He hit the tank and it began leaking gas but did not detonate.⁵ At 11:03:14, Lt. Jimenez issued an order that “any car with a rifle who has a clear shot [take the shot].” Sgt. Gose advised that Sgt. Jerry Heimbigner, 90023, was present and armed with a long gun. Lt. Jimenez then continued: “[Sgt. Heimbigner], if it’s necessary, take him out.”⁶ As these transmissions are being made, officers ordering the suspect to put his hands up can be heard in the background. At 11:03:59, Sgt. Gose advises the dispatcher there appears to be a female party “down” at the front porch of the house immediately south 2265 S. Irving Street. The dispatcher confirms that Ms. Estrada is still inside her house and on the phone with the 911 operator.

At 11:06, Sgt. Gose broadcast Sgt. Heimbigner was in position with the long gun and waiting for the suspect to be in a position which would allow him to “take the shot” without risking officers or civilians. For several minutes, officers remain in position attempting to “maintain a visual” on Abeyta who continued to move back and forth around and behind the cars in his driveway. At 11:10, Sgt. Gose, who is acting as a spotter for Sgt. Heimbigner, states, over the air “take the shot, [Sgt. Heimbigner] take the shot.” A report can be heard and then Sgt. Gose airs “party’s down! Party’s down. . . .we’re moving up, we’re moving up. Party took one shot.” Abeyta was in custody.

Within three minutes, officers arranged for paramedics to respond to the house and tend to Abeyta. Other officers made entry into the home and got aid to Ms. Estrada. Officers and paramedics responded to 2275 S. Irving Street where they found Ms. Rosskilly dead from an apparent gunshot wound to the head. Officers and investigators began securing the scene, which was complicated by the need to have the bomb squad respond, clear the two improvised explosive devices and a hand grenade found in the garage (it was determined to be inert). At least eighteen citizen witnesses were identified and interviewed, some of them eyewitnesses to some of the events described above, others were Abeyta’s relatives or had knowledge regarding his history and mental state. In addition to Sgt. Heimbigner, at least 45 officers responded to the initial call or to assist in traffic and perimeter control as the events unfolded. Written statements were obtained from these officers; video-taped statements were obtained from sergeants and officers who were with Sgt. Heimbigner when he discharged his firearm as well as those command officers who authorized the use of physical force by Sgt. Heimbigner.

In his video-taped statement, Sgt. Gose described the way he and other officers approached Abeyta’s position from the south. He told investigators that when he arrived, he and Officer Jose Velasquez, 05012, started working their way north on Irving toward Abeyta, moving house to house on the west side of the street, using trees and houses for cover. The approach was made in this fashion because the dispatchers and other officers had aired that Abeyta was armed with a rifle. Sgt. Gose was a few houses south of the 2265 S. Irving when he first saw Abeyta.⁷ Abeyta was moving back and forth from the area behind the cars to the street, often out of Sgt. Gose’s view. At some point, Abeyta saw the officers and began telling them to “stay back”. During this time, Sgt. Heimbigner

⁵ Officer Lewis Padilla, 94046, was in a position to see Abeyta take this shot and, in his written statement, he describes the action thusly: “The suspect walked towards [his] house out of my vision temporarily. He then walked and stood in the front yard. He then shot at one of the kerosene bottles in the street. The bottle flew a few feet off the ground and spun around. . . .”

⁶ At 11:06:13, District 4 Commander William Nagle, call sign “Command 4” reaffirmed Lt. Jimenez’s directive: “Command 4 to [Sgt.] Heimbigner – if you have a clear shot, take it.”

⁷ It was a clear, sunny day and visibility was good.

came up behind Sgt. Gose and Officer Velasquez and joined with them. All three of the officers were dressed in full blue Denver Police uniforms, as were other officers approaching Abetya's position.

Sgt. Gose told investigators they took a position on the south side of the fence on the south side of 2295 S. Irving Street. Sgt. Heimbigner, who was armed with a long gun, moved up and behind a large vehicle in the driveway of 2295 S. Irving Street, which he was able to use as cover and as a shooting platform.⁸ While the officers were at this location, Abetya took the shot which struck the propane tank. Sgt. Gose told investigators that from this position, he and the other officers were able to see there was a female party down and not moving on the front porch of a house between their position and Abetya's. Sgt. Gose heard Lt. Jimenez authorize the officers to "take the shot" but Abetya was moving back and forth and Sgt. Gose indicated officers could not acquire a target. Sgt. Gose indicated that Abetya was calling to them that he wanted to speak to his preacher and that he needed help; Sgt. Gose and other officers responded that he needed to surrender with his hands up but he refused to do so. Sgt. Gose repeatedly shouted to Abetya, "Put your hands up! Come out! Give yourself up." As the stand-off continued, Sgt. Gose confirmed, over the air, the command authorization to fire was still in effect. Shortly thereafter, "[Abetya] exposes himself [to their view]; [Sgt. Heimbigner] does take the shot and he's down ..."

Sgt. Heimbigner also provided investigators with a video-taped statement. Sgt. Heimbigner, assigned to car 490, was completing paperwork at the District 4 station when the call came out. He saw Lts. Kushdilian and Jimenez running down the hall. They told him there was an "active shooter" situation. He grabbed his rifle, drove to the scene and arrived immediately after Lt. Jimenez. Upon arriving, Sgt. Heimbigner went to the corner of Harvard and Irving Streets where he saw Abetya midway down (north) the block. Sgt. Heimbigner made his way to the northwest corner of the intersection so that he would be on the same side of the street as the suspect. He then began moving north along the houses. He came up behind Sgt. Gose and Officer Velasquez, made contact with them and the three began working their way toward Abetya's position.

Sgt. Heimbigner told investigators that as he moved to his final position of cover behind the black pick-up truck, he heard the rifle shot Abetya fired into the propane tank and then saw the propane tank spewing gas. From his position behind the truck, he could see Abetya standing behind the yellow vehicle in his driveway at a distance Sgt. Heimbigner estimated to be about 50 yards. Abetya's arms were down and Sgt. Heimbigner was unable to see whether he was holding any weapons. Sgt. Heimbigner confirmed that Abetya became aware of the officers and stated that, over a period of about five minutes, he issued numerous commands to Abetya to move to the center of the street and surrender. He also heard Abetya indicate he wished to speak to his priest. He responded that officers would allow him to do so but he would have to surrender first. Sgt. Heimbigner took note of the female party "down" on the front porch one house to the south of Abetya's position. "She doesn't seem to be responsive. She's not moving. She's making no effort to get up or move or anything. She just appears to be down, down and out on the patio." He then hears Abetya say, "I have two more hostages!"⁹

⁸ See the photo on page 12.

⁹ A civilian witness, Edmund Lohnes, provided a written statement in which he stated that he was inside his house where he could hear but not see but the events unfold. He heard Abetya say he wanted to talk to a "pastor", "I have hostages", "Just shot[sic] me" and "Get it over."

The standoff continued for several minutes. The officers continued to order Abeyta to raise his hands. Sgt. Heimbigner recalled two distinct instances where Abeyta, standing behind a vehicle, raised his left hand -- he never raised both hands. Sgt. Heimbigner enumerated the factors he considered in determining whether and when to fire:

So, once we reached a point where uh, [Abeyta] had fired rounds, we had observed that he was armed with a rifle, uh, that he had explosive devices in the street, he was refusing to talk to us or surrender, he had, um, told us that he had additional, uh, hostages that we weren't aware of who they were, the fact that we had this female a house away that, in my, uh, judgment, needed immediate medical care, you, know, the things started to add up really quick that there was just a lot going on with this individual. . . .

These facts gave the sergeant concerns regarding the welfare of possible hostages, the safety of the neighbors in the area who were coming out of their houses (Sgt. Heimbigner saw at least one neighbor standing in her front yard), the safety of the officers who were positioned in the area and "most concerned for the welfare of this lady that I knew we needed to get medical care to." Another fear Sergeant Heimbigner had was Abeyta might be attempting to lure officers closer so he might detonate another IED of which the officers were unaware. In answer to questions by investigators, Sgt. Heimbigner made it clear that although he was aware that Commander Nagle had authorized him to fire, he fired because of the facts and concerns set forth above.

About five minutes after Sgt. Heimbigner attained his position behind the black truck, Abeyta, while moving about, moved into an area between two vehicles and exposed his upper body. Abeyta started to turn toward Sgt. Heimbigner's position and Sgt. Heimbigner fired one shot. Abeyta fell to the ground and officers immediately advanced and took him into custody. Sgt. Heimbigner moved forward with those officers. As he came around a vehicle, he saw Abeyta on the ground holding a black semi-automatic pistol.¹⁰

Sgt. Heimbigner was armed with a Colt AR-15 .223 caliber rifle.¹¹ This rifle has a 30 round magazine capacity and may be carried with an additional round in the chamber. Sgt. Heimbigner told investigators he carries his magazines fully loaded but does not carry the rifle with a round in the chamber. He chambered a cartridge when he arrived on scene. When the rifle was delivered to Firearms Examiners, it had 28 rounds in the magazine and one in the chamber. Crime scene investigators at the scene located one spent .223 casing in the area where Sgt. Heimbigner was positioned. The physical evidence confirms the sergeant fired one shot.

Abeyta was armed with a Savage 30-06 rifle, mounted on a tripod, a 12 gauge shotgun with a drum magazine attached, and a 9mm handgun. He also had a black bag in which were two boxes of ammunition for the 30-06 rifle; 12 boxes of 9mm handgun ammunition; three boxes of 12 gauge ammunition and a 20 round shotgun drum magazine.¹² The 30-06 rifle has a four round magazine capacity and Abeyta's rifle had an ammunition holder on the stock loaded with additional rounds. When Denver police firearms examined the rifle, it was found to have a round in the chamber and two rounds in the magazine; his 9mm handgun contained one live round in the chamber and seven rounds in the magazine. The shotgun found to have one live round in the chamber and 18 rounds in the drum

¹⁰ Abeyta's handgun is shown in photos on page 14.

¹¹ Sgt. Heimbigner was also carrying a Springfield model XD 9mm handgun. This firearm was not used during this incident.

¹² See the photos on pages 13.

magazine (which has a 20 round capacity). Paramedics attended to Abeyta as soon as it was safe for them to enter the area. He had sustained a single gunshot wound. He was taken to Denver Health Medical Center where he was treated for a “gunshot wound to the chest with pulmonary contusion and rib fractures.”

Denver police officers entered the home at 2265 South Irving Street and located Autume Marie Estrada and Danica Estrada. Autume Marie Estrada had suffered gunshot wounds to both ankles. She was transported to Denver Health Medical Center where she was treated for her wounds. Danica Estrada told officers that a piece of metal hit her arm when her father shot her mother. The shrapnel did not scrape or penetrate her skin.

On August 17, 2013, Dr. Dawn Holmes, a forensic pathologist with the Denver Coroner’s Office performed an autopsy on the body of Sandra Rosskilly. Dr. Holmes documented a single gunshot wound to the left upper cheek and neck. This gunshot wound was the cause of death. Dr. Holmes recovered the bullet during the post-mortem examination and it was delivered to the Denver Police Department’s Crime Laboratory for examination and comparison to Abetya’s handgun.

On August 26, 2013, Abeyta was charged in Denver District Court with the First Degree Murder of Sandra Rosskilly and the First Degree Assault of Autume Marie Estrada. He was also charged with the Use of Explosives or Incendiary Devices during the commission of a crime (a class 2 felony) and Child Abuse to Danica Abetya. Those charges are pending.

LEGAL ANALYSIS

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 another human being is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. As the evidence establishes that Abetya’s injuries were caused by shot fired by Sgt. Heimbigner, the determination of whether his conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707 defines the circumstances under which a peace officer can justifiably use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate **physical force** upon another person when and to the extent that **he reasonably believes it necessary:**

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to affect such an arrest or while preventing or attempting to prevent such an escape.

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

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

or

(b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:

1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
2. Is attempting to escape by the use of a deadly weapon; or
3. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the terms “Deadly weapon” and “Deadly physical force” as follows:

“**Deadly weapon**” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

“**Deadly physical force**” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P. 274, (Colo. 1910).

The test in determining whether an officer’s use of physical force to take a suspect into custody is appropriate is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. As Abeyta survived his wounds, the issue in this case revolves around the question whether Sergeant Heimbigner’s use of **physical force** was justifiable.

Therefore, the question presented in this case is whether, at the instant Sgt. Heimbigner fired his rifle, he reasonably believed that level of force was necessary to take Abeyta into custody or that Abeyta was directing or was about to direct unlawful physical force against either him, the other officer, *or* another person.¹³ In order to establish criminal responsibility for an officer knowingly or intentionally causing injury to another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

Because the facts of this incident are somewhat unusual in that an officer acted as a “sniper” and fired a round only after waiting several minutes, we have sought to provide an understanding of the totality of the circumstances that were present. The officers on the scene were aware of several important facts: First, at least one person in Abeyta’s home had been shot and was awaiting aid. Second, Abeyta was armed with several firearms and, in the officers’ presence, attempted to ignite or detonate an improvised explosive device. Third, one person was lying on a front porch within the subject’s range of fire, injured and apparently not responsive. And, finally, Abeyta had given no indication he intended to surrender without incident. Of primary concern was the fact that as long as Abeyta remained in his position, emergency personal were unable to gain entry to the house at 2265 S. Irving and determine whether anyone needed medical assistance or gain access to the front porch at 2275 S. Irving Street and treat that victim.

Sgt. Heimbigner and the officers with him were confronted with a situation wherein a failure to act would likely have resulted in the death of Autume Estrada and possible injury to others – the only option they had was to end the standoff as expeditiously as was possible. There was no way an officer could have closed the distance sufficiently to take Abetya into custody by any less lethal option available. Accordingly, and after a careful consideration of all of the facts, we find Sgt. Heimbigner’s actions were clearly justified under Colorado law. Therefore, no criminal charges are appropriate against him for his actions in this incident. That Sgt. Heimbigner and the other officers involved in this situation were able to take Abetya into custody without further injury or loss of life to any other innocent citizens is something for which the men and women of the Denver Police Department may be justly proud.

The attached document entitled Officer-Involved Shooting Protocol 2013 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. The more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly.” In accordance with the protocol, the administrative and tactical aspects of the event may be addressed by the Manager of Safety and Chief of Police in their review and administrative decision letters they chose to issue.

¹³ That senior command officers had given orders authorizing the Sergeant to fire his rifle is a fact to consider when weighing the totality of the circumstances and determining the reasonableness of his actions. The analysis is still whether Sgt. Heimbigner’s belief that the level of force used was appropriate was objectively reasonable.

October 11, 2013

As there is a pending prosecution against Abeyta, we will open our file related to this Officer-Involved Shooting for in-person review at our office following the conclusion of that criminal proceeding. The Denver Police Department is the custodian of record related this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. § 16-5-209.

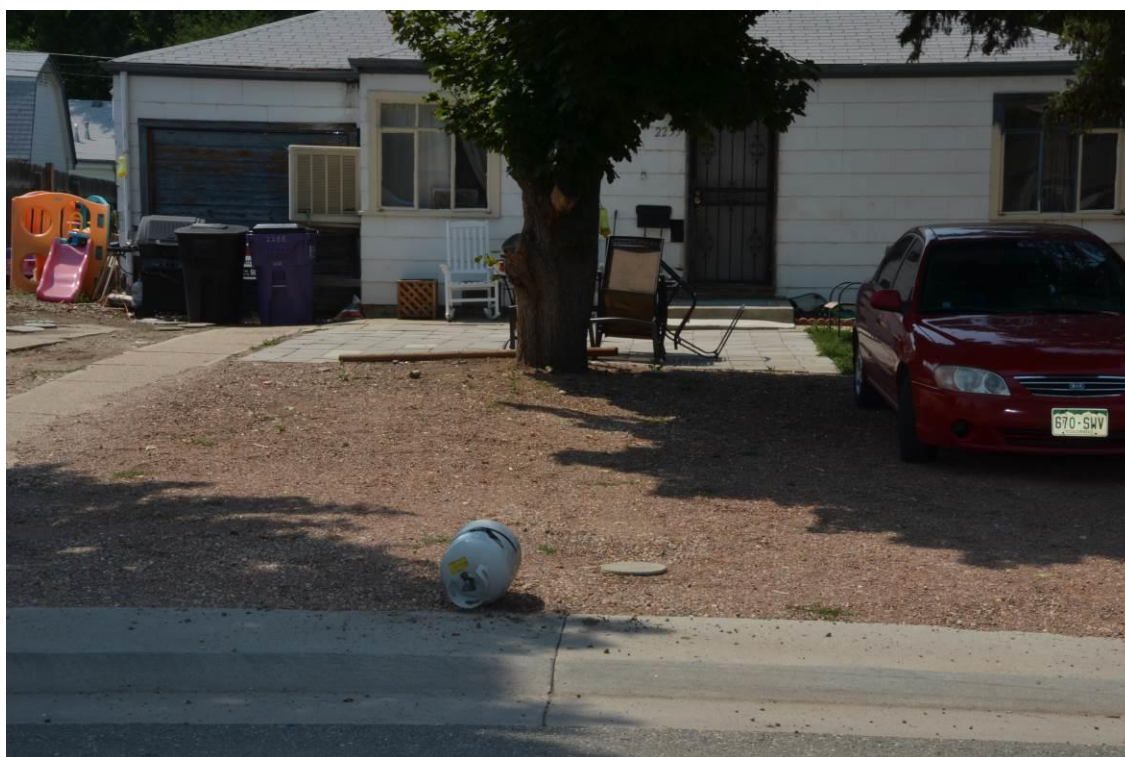
Very truly yours,

Mitchell R. Morrissey
Denver District Attorney

cc: Sgt. Jerry Heimbigner; Doug Jewell, Attorney at Law; David Bruno, Attorney at law; Michael Hancock, Mayor; All City Council Members; Doug Friednash, Denver City Attorney; Alex Martinez, Manager of Safety; David Quinones, Deputy Chief of Police; Mary Beth Klee, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; William Nagle, District 4 Commander; Gregory Laberge, Crime Lab Commander; Lt. Ron Thomas, Commander of Internal Affairs; Lieutenant Steve Addison, Major Crimes Division; Lieutenant James Haney, Major Crimes Division; Sgt. James Kurukis, Homicide; Sgt. Ed Leger, Homicide; Detective Michael Martinez, Homicide; Detective Jaime Castro, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Henry R. Reeve, General Counsel, Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor.



One propane canister set in street by Abeyta



Second propane canister at point of rest after Abeyta fired rifle round at it



Looking south on South Irving Street. In addition to the propane tanks, Abeyta's three vehicles parked in the driveway at 2265 S. Irving Street can be seen near the top of the photo.



View of the pick-up truck in driveway of 2295 S. Irving Street used by Sgt. Heimbigner as cover, concealment and as a shooting platform. Abeyta's blue vehicle can be seen in the background behind an uninvolved silver car.



Photo showing shotgun with drum magazine in Abeyta's driveway.



Close-up of shotgun



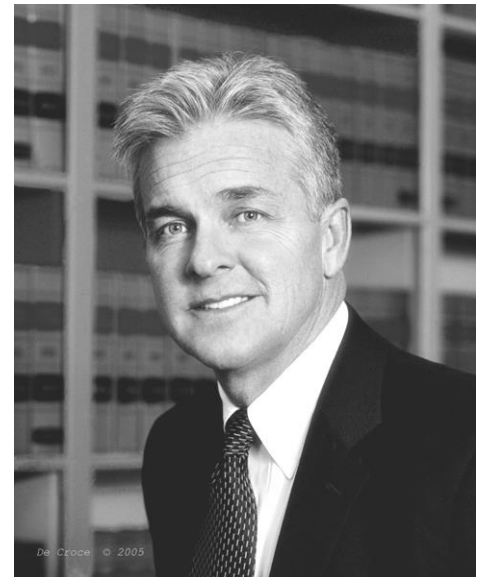
Ammunition box and bag holding additional ammunition in Abeyta's driveway.



Photos showing Abeyta's 9mm pistol



Photos showing Abeyta's 30-06, with scope and tripod mount.



**Mitchell R.
Morrissey**

OFFICER-INVOLVED SHOOTING PROTOCOL 2012

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, and the Senior 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.¹⁴ 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

¹⁴ 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.

is necessary for the successful completion of the 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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