



# DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

201 W. Colfax Avenue, Dept. 801, Denver, CO 80202

Bus. Phone: 720-913-9000  
Fax: 720-913-9035

September 14, 2015

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

RE: Investigation of the shooting death of Paul Castaway, DOB 10/10/79, DPD # 535881, in which Officer Michael Traudt, 13073, fired shots on July 12, 2015, at 4501 West Kentucky Avenue, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting death of Paul Castaway, in which shots were fired by Officer Michael Traudt, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against Officer Traudt. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where tactical 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

On July 12, 2015, Ms. Lillian Castaway was babysitting her grandchildren in her home at 4545 Morrison Road, Unit 102, when her adult son, Paul Castaway ("Castaway") entered without her permission (she told investigators she had "kicked" him out because he had a history of abusing alcohol and drugs). Castaway was armed with a knife and was, in her estimation, drunk. Ms. Castaway stated he "came at me and he poked me in the neck." He then broke a couple of household items and left through the back door when a family member entered the home. Ms. Castaway ran across the street to the Denver Indian Center at 4407 Morrison Road and called 911.

The 911 call came in at 6:21 p.m. After getting the address and phone number, the call taker asked Ms. Castaway what had occurred:

Ms. Castaway: *My son, he pulled a knife on me. He's mentally ill and he's drunk. And my daughter's grandkids, they're supposed to be picked up by my daughter-in-law, and I have my grandkids with me, we took off running out the door. [Ms. Castaway seems out of breath or upset.]*

Call taker: Is anybody injured?  
 Ms. Castaway: *He, he poked me in the neck.*  
 Call taker: You've been poked in the neck?  
 Ms. Castaway: *Yes.*  
 Call taker: Do you need an ambulance?  
 Ms. Castaway: *No.*  
 Call taker: Are you bleeding?  
 Ms. Castaway: *No. Please send .unintelligible.. I want them to catch him.*  
 Call taker: Alright. Listen. Did it break the skin?  
 Ms. Castaway: *Yes, it did. He's around. He's wearing a Bronco shirt. He's in my house. He said he would rather go out killing himself. He had, I took my grandkids and ran out the door and he's in there.*  
 [Ms. Castaway sounds close to tears.]

The call taker continued to get information. She asked Ms. Castaway for her son's name and received this answer: "*Paul Castaway - and I know there's warrant for him.*" The call taker confirmed the spelling of the name and then Ms. Castaway added, "*Please hurry!*" Ms. Castaway provided the call taker with a detailed description of Castaway and stated that she and her grandchildren had gone to the Indian Center, adding "*I'm so scared!*" Ms. Castaway stated Castaway had been doing "meth" and that he was "suicidal," telling the call taker he said "*he'll take himself out - he's got a big knife.*" She described the weapon as a long kitchen knife which she believed he had placed in his front pocket. The call taker remained on the telephone with Ms. Castaway until the police arrived.

At 6:22 p.m., the police dispatcher assigned the call to car 431H, a District Four patrol car which on that day had two officers assigned, Michael Traudt, 13073, and Jerry Lara, 13074. Both officers were dressed in full blue DPD uniforms. Their police car was a fully marked Ford Crown Victoria patrol car.

*Dispatcher:* 431 Henry [Car 431H]. 4545 Morrison Road. Four Five Four Five Morrison - Morrison Road, apartment number 102, on a weapons call. [Reporting Party]'s claiming her son pulled a knife on her and poked her in the neck. No injuries. Further that's coming in, quite a bit of premise history of family disturbance here.  
*Dispatcher:* Thanks, just a heads-up. This is being changed to a stabbing due to, apparently, it broke the skin - *unintelligible* - no injury.

Officers Traudt and Lara were in the area of Federal Boulevard and Alameda Avenue when they got the call - Officer Traudt was driving and Officer Lara was in the passenger seat. As they drove toward the Morrison Road address, they checked their mobile data terminal ("MDT") to obtain more information regarding Castaway. The information they obtained included Castaway's mug shot and the fact that there were two active warrants for his arrest.<sup>1</sup>

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<sup>1</sup> One warrant, dated 7/4/15 was for "ASSAULT, KIDNAPPING AND HIT & RUN/DOMESTIC VIOLENCE." The other warrant, dated 6/2/15, was issued for a "FAILURE TO APPEAR" in a municipal ordinance - general sessions case (case # 13GS013899). There was also an outstanding protection order entered on behalf of Lillian Castaway in this latter case which provided "DEF SHALL VACATE HOME OF VICTIM - DEF SHALL NOT CONTACT OR COMMUNICATE W-VICTIM --- DEF MUST KEEP A DISTANCE OF 100 YARDS FROM THE VICTIM - SHALL NOT HARASS, MOLEST, INTIMIDATE, RETALIATE AGAINST OR TAMPER WITH ANY VICTIM OR WITNESS - MUST STAY AT LEAST 100 YARDS AWAY FROM 4545 MORRISON RD APT 102"

The officers arrived at the Indian Center at 6:26 p.m. and met with Ms. Castaway. She confirmed that her son threatened her and her granddaughters and had placed a knife to her throat, showing the officers the puncture mark. Due to the nature of the incident, paramedics had been dispatched. They arrived while the officers were talking to Ms. Castaway and checked on her condition. While the paramedics were attending to Ms. Castaway, Officers Traudt and Lara and Sergeant Tim Hyatt<sup>2</sup> went over to Ms. Castaway's apartment to verify that Castaway was not at that location.

The officers found the apartment was vacant but, as Officer Traudt later stated, "an obvious altercation [had] occurred. There was broken glass and the living room is in [dis]array – just a disaster – there's stuff everywhere." The officers returned to Ms. Castaway's location and, once the paramedics completed checking her, ascertained that she did wish to press charges against Castaway. Officer Traudt then took a video-taped statement from her in which she provided details of the assault and expressed her fear of Castaway's violent and dangerous nature and her belief he was mentally ill and on drugs.

When the officers had completed this phase of their investigation, Ms. Castaway requested that they return with her to her apartment because she was, as Officer Traudt recalled it, "pretty scared. She had told us, 'I'm really scared that he's going to come back and try to kill me.'" Ms. Castaway was walking and the officers were driving along in the police car. As they were approaching her residence, Ms. Castaway turned, looked back and, in Officer Lara's words, "in a bit of a panic [she] starts pointing down Morrison Road and, she says, 'He's over there! He's over there!'" The officers directed Ms. Castaway to go into her apartment and lock the door. They then turned around and drove toward Castaway. Officer Traudt stated that as they got close to him,

He started walking. There's a chain-link fence between where our vehicle was and where he was. So I pulled my patrol vehicle up, my fully marked patrol vehicle, and then got out of the car in full uniform. I announced myself as a Denver police officer. I said, "Denver police. Stop!" And he looked at me, he made eye contact with me and my partner, and then he kept walking up the chain-link fence. As I started to close distance between me and him, he took off running southbound along that chain-link fence. I then gave chase. I aired it to dispatch that we were running southbound through the trailer park in the 4500 block of Morrison Road.

Castaway ran through an opening in the fence. Officer Lara followed him through the opening while Officer Traudt ran parallel to Castaway on the other side of the fence until he found a place where he could jump the fence. Officer Lara described this phase of the foot pursuit:

So I took the same path that [Castaway] took and Officer Traudt ran along the fence line and I lost sight of [Officer Traudt] at that point. So I'm running behind [Castaway] and I'm still a little ways back, and Officer Traudt, I see him come through, so he may have jumped the fence or something like that, and then we both chase him all the way down, he's running, all the way down to what would be the eastern-most area of the trailer park, which is gonna be the third row in. And, I see he took off his Bronco jersey and dropped it on the ground. He had like a white, tank-top shirt on. And then, he's, he's looking at us and he has, I see that he has a knife in his hand. It's a, a pretty long knife, has a brown, like wooden handle on it.

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<sup>2</sup> Because of the nature of the original call, after dispatching car 431, the police dispatcher advised a supervisor. Sergeant Hyatt, also working in a uniformed capacity with call sign "430B", indicated that he would also respond. CAD records show he arrived on scene at 6:29 p.m.

At this point, Castaway stopped and turned toward the officers. Officer Traudt told investigators,

He put the knife to his throat. He didn't advance towards me. He stayed in that one spot and he started moving around and it was – it reminded me of like a boxer, like somebody who was like bobbing and weaving, like was getting ready to fight me, but he had the knife to his throat. And he kept saying, “kill me, pussy. Kill me, you fucking pussy.” And he probably said that three or four times. I had drawn my gun and was pointing my gun at him, and I – I was yelling, “Drop the knife! Drop the knife! Denver police! Drop the knife! He then turned away from me and started running towards the trailers. I holstered my weapon and I gave chase.

The two officers pursued him into the trailer park. Castaway stopped again, briefly. Officer Traudt drew his gun and began pointing it at Castaway but realized there were “five or six kids” behind him. Officer Traudt stated he

yelled for the kids to get down. I'm like, “Please get down! Go back to your houses! Get down!” I'm yelling at them. And [Castaway] kind of turns and looks at me and then takes off running again.”

Castaway ran back into what Officer Lara described as the “next row, the center row” of the trailer park. The foot chase continued with officer Traudt directly behind Castaway and Officer Lara behind Officer Traudt.<sup>3</sup> Officer Lara described the next critical moments, telling investigators, Castaway

comes out through this open gate and runs past a Ford pick-up, or something. A dark colored pick-up truck that was there. And he stops, again, and he's, he's moving around and, uh, to the best of my recollection, he, he puts the knife up to his neck. And we both have him at gunpoint and, at that moment he had the knife up to his neck, so I saw that Officer Traudt had his weapon pointed at him, so I holstered mine and transitioned to a TASER, thinking, well [Officer Traudt's] got lethal cover, I can transition to a TASER.<sup>4</sup> But as he did that, the suspect started coming towards us, or more towards [Officer Traudt], but started advancing and that's when Officer Traudt fired his weapon.<sup>5</sup>

Castaway had run around the pick-up truck and behind a wooden fence, with both officers running behind him. There were several children in the lane and as Castaway entered the lane, the children scattered in several directions. Once behind the fence, Castaway abruptly turned and started moving back to the officers. Officer Lara was to Castaway's left but Officer Traudt was directly in his path. Officer Traudt began retreating. In his video statement, Officer Traudt described the critical moments:

So I came around the corner with my gun out and there was a cubby – there was a building, the fence – or the truck and then a fence, and when I came around the corner, he was gone, and I thought I saw him moving back in that cubby.

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<sup>3</sup> Investigators prepared a diagram showing the path Castaway took during the foot pursuit. That diagram is found at page 16.

<sup>4</sup> Officer Lara clarified that he had placed his handgun in his holster but had not yet actually gotten his TASER out when Castaway advanced and Officer Traudt fired.

<sup>5</sup> In answer to a question from an investigator, Officer Lara stated that “to the best of his recollection” both he and Officer Traudt remained in a stationary position – “we stayed put; we stayed in the same spot” - as Castaway advanced toward them. The video, however, clearly shows Officer Traudt backing away from Castaway and Lara taking one or two steps to his right.

I took a wide approach to the corner, and as I came around, he jumped out with the knife to his throat and he immediately started walking towards me aggressively and – and it wasn't even a walk – it was – it was a fast walk. I had my gun pointed at him. I was yelling for him to drop the knife. I started to back up to try to create some distance between me and him and I hit something – I ran into something, and then I stumbled over kind of a speed bump and lost my footing for a second. And he just started coming even faster and faster and he was probably five to six feet approximately, I think, from me, and he started to move the knife from his throat towards me, and he didn't stick it out, but he brought it down, and he was walking at me just aggressively and he wouldn't stop, and I didn't feel like I could back up anymore. I had already almost fell down.

I knew that those kids were still behind me. They weren't listening for me to tell them to go into the house. I – at that point when that knife came down and he was so close, I – I made the decision to shoot. I thought he was going to stab me with the knife. I thought he was going to try to kill me.

### **VIDEO SURVEILLANCE**

An office and laundry located at 4501 W. Kentucky Avenue, in the middle of the trailer park, had a video surveillance system recording the exterior of the business. One camera (camera # 4) was trained toward the area in front of the business and the field of view included the roadway on which the pick-up truck described by the officers was parked, the fence behind which Castaway ran and then turned back towards the officers, and the area in the lane where the shooting occurred. Another camera (camera # 3) provides a close up view of the fence and the pick-up truck but does not show the area to the immediate west where Castaway and Officer Traudt were when Officer Traudt fired his pistol. A third exterior camera (camera # 13) is pointed towards Morrison Road. Video from that camera shows the point at which Castaway begins to run from the officers and corroborates Officer Lara's statements regarding that aspect of the incident.

The video recovered from camera #4 establishes that, immediately before the shooting, several children and young people were playing in the street. A young girl, wearing a red dress, drags a trash receptacle into view. Castaway can be seen running into the area and kids start to scatter as Castaway comes near. The officers then come into view behind Castaway, each with his handgun drawn. Castaway is holding the knife to his neck with his right hand. As he runs behind the fence he brings the knife down but then raises it back to his neck and begins walking directly toward the officers. It appears he is now holding the knife to his neck with both hands. He continues to advance, closing the distance between himself and the officers. Officer Traudt retreats, inadvertently backing into the trash receptacle which the young girl had left in the street seconds before. Officer Traudt steps to his right to avoid the trash receptacle and continues to back up. Officer Lara takes one or two steps back. Castaway appears to be no more than six to eight feet from Officer Traudt and still advancing when Officer Traudt fires. Castaway takes one more step and falls. The knife appears to be in his left hand when he goes to the ground.<sup>6</sup> Officer Lara moves in and takes Castaway's left arm so as to control it. Officer Traudt appears to be making a radio call. He then steps in to assist Officer Lara in controlling Castaway.<sup>7</sup>

### **CIVILIAN WITNESSES**

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<sup>6</sup> A clip from the video showing the incident is attached to this letter. Also attached are four photos captured from the video.

<sup>7</sup> Officer Lara explained that he moved in and grabbed Castaway's wrist so as to control it because he could not see whether the knife had fallen or Castaway still possessed it. Officer Traudt then took hold of Castaway's other arm and the two officers continued to hold him until additional officers arrived at which point they were able to place him in handcuffs.

Investigators obtained statements from a number of citizen witnesses, nine of whom stated they saw the foot pursuit as well as at least some aspect of the actual shooting. Eight of those witnesses were teenagers; the oldest was 19 years of age and the youngest was 14.<sup>8</sup> Several of these witnesses saw Castaway when he first turned toward the police. One of them, a 16-year-old,<sup>9</sup> told investigators he heard the officers ordering Castaway to “drop the knife! Drop the knife!” Another witness told investigators the officers were ordering Castaway to “stop running.” Several of the witnesses saw Castaway take off the Bronco shirt he was wearing at or about this time. Two of them recalled the police officers, as one witness put it, “told us to move so everyone, like, just ran.”

A number of the witnesses saw the final confrontation. The same 16-year-old who heard the officers first ordering Castaway to drop the knife, stated that Castaway ran a short distance, then stopped and turned toward the officers, with the knife now pointed toward his throat. The two officers appeared side by side and one of them again ordered him to “drop the knife,” to which Castaway responded, “*if you shoot me, I’m gonna kill myself.*” Three of the other witnesses also heard Castaway make that statement immediately before the shots were fired.

Three of the witnesses told investigators that, at the time of the shooting, Castaway remained in a stationary position. Another witness told investigators that Castaway was moving toward one of the officers and had closed the distance to about five feet before the officer fired his handgun. It appeared to this witness that the officer did not retreat but remained stationary. One 15-year-old stated that Castaway made no statements but, rather, “was quiet the whole time.” This witness added “I think he was going to surrender or something, but, I don’t think so. I saw him go towards the cops so that when the cops, uh, one guy, with glasses, shot him three times or two times, I can’t remember.” This witness estimated Castaway was three to five feet from the officer when the shots were fired. This witness also told investigators he thought Castaway was going to surrender because as he stepped toward the officer, he brought his hands down toward his sides, still holding the knife in his right hand.

Six of the witnesses stated Castaway was holding the knife either at his throat or alongside his neck when the shots were fired. One witness stated that, just before the shots were fired, Castaway “kind of pushed the knife a little more, close [demonstrating, with his hands clasped together, a motion toward his own neck.]” As noted above, a different witness stated Castaway was bringing his hands down when the shots were fired.

Investigators also spoke to Alfred Marquez, 12/15/58, who identified himself as a friend of Castaway’s. Mr. Marquez stated he had spoken with Castaway some time earlier and noted he was carrying a knife. Mr. Marquez told investigators that during that earlier conversation, Castaway had indicated that he was wanted by the police and stated that he was not going to back to jail. In Mr. Marquez’s words, Castaway was “getting distraught.” Mr. Marquez later saw the part of the foot pursuit where Castaway dropped the Bronco jersey. Shortly thereafter he heard someone, whom he believed was a police officer, yelling, “Drop it! Drop it!” He then heard gunshots.

#### **PHYSICAL AND FORENSIC EVIDENCE**

Officer Traudt was armed with a model 34 Glock 9mm semi-automatic pistol. This handgun has a 17-round magazine and may be carried with an additional round in the chamber. Based upon

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<sup>8</sup> There were younger children in the area but video statements were not taken from them.

<sup>9</sup> As the video shows the final moments of the shooting, we see no reason to identify these juvenile witnesses by name in this letter. Their names and statements are in the investigative file.

the scene investigation and inspection of Officer Traudt's handgun by firearms examiners, investigators determined he fired three rounds.

Castaway was wielding a kitchen-type knife with an overall length of twelve inches and a blade length of 7.5 inches. The knife was recovered at the scene. As Castaway was a convicted felon, his possession of this weapon would constitute a felony.

On July 13, 2015, an autopsy was conducted on Castaway's body by Doctors Kevin Lougee, a forensic pathology fellow with the Office of the Denver Medical Examiner ("OME"), and Dr. James Caruso, Chief Medical Examiner for the OME. The doctors documented two gunshot wounds to the torso. Both bullets perforated the right chest wall and damaged the right diaphragm, liver and duodenum. The cause of death was determined to be "gunshot wounds of the torso that injured the liver and duodenum." The autopsy report goes on to indicate that "toxicological testing was positive for ethanol, methamphetamine, amphetamine, diazepam, nordiazepam, and cannabinoids in femoral blood, and positive for cocaine metabolites, benzodiazepines, cannabinoids and amphetamines in urine." Castaway's BAC was found to be 0.165.<sup>10</sup>

### 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. The evidence establishes that the shots fired by Officer Traudt caused Castaway's death. 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;**

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<sup>10</sup> This is twice the level at which a driver is presumed by law to operating a motor vehicle under the influence of alcohol. See, C.R.S. §42-4-1301.

**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.

In order to establish criminal responsibility for an officer knowingly or intentionally causing death to another, the state must prove beyond a reasonable doubt that the officer either did not really believe in the existence of the circumstances required by the statute, or, if he did hold such a belief, that belief was, in light of all available facts, unreasonable.

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).

## **CONCLUSION**

The question presented in this case is whether, at the instant Officer Traudt fired his pistol, the legal justifications for using deadly physical force as set forth in C.R.S. § 18-1-707(2) were applicable. I conclude they were.

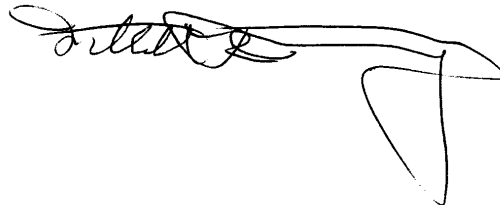


In this investigation we are, once again, presented with a situation in which police officers are called to deal with someone who is violent, apparently suicidal, and who has an astounding combination of alcohol and controlled substances in his system. As is all too often the case, the actions and decisions of the subject place an officer who is attempting to take the subject into custody or “talk him down” in an untenable situation: a situation where the officer will, in many instances, be driven by the subject’s actions to use some degree of physical force or deadly physical force.

In this case, Castaway’s decision to turn, confront the officers and deliberately advance toward Officer Traudt, knife in hand, rather than complying with his orders, compelled Officer Traudt to shoot. The surveillance video clearly depicts Castaway moving quickly and purposefully toward Officer Traudt. Castaway’s actions and the statements he made suggest he had decided to die and further decided that Officer Traudt would be the instrument of his demise. Officer Traudt’s decision to fire his pistol was, under these circumstances objectively reasonable and appropriate. Indeed, Castaway gave him no other choice. Officer Traudt’s actions are justifiable under Colorado Law and, accordingly, I will not file criminal charges against Officer Traudt.

The attached document entitled Officer-Involved Shooting Protocol 2015 explains the protocol followed in this investigation. Our file may be open for in person review in accordance with the provisions of that protocol. The Denver Police Department is the custodian of records related to 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,

A handwritten signature in black ink, appearing to read "Mitchell R. Morrissey", written over a horizontal line. The signature is stylized and cursive.

Mitchell R. Morrissey  
Denver District Attorney

cc: Officer Michael Traudt; Marc Colin, Attorney at Law; Michael Hancock, Mayor; All City Council Members; Scott Martinez, Denver City Attorney; Stephanie O’Malley, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Ron Saunier, Commander of Major Crimes Division; Mark Fleecs, District IV Commander; Gregory Laberge, Crime Lab Commander; Joseph Montoya, Commander of Internal Affairs; Gerald; Lieutenant Matthew Clark, Major Crimes Division; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Detective Louis Estrada, Homicide; Detective Jamie Castro, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor; and Rev. William T. Golson, Jr.



Close-up of puncture wound to Ms. Castaway's neck.



Area where shooting took place – Trash can and “speed bump” encountered by Officer Traudt as he backed up are shown. Markers 1, 2, and 3 are placed next to spent shell casings.



Fence lane into which Castaway fled and from which he returned and began approaching the pursuing officers.



Still photo from surveillance video - Castaway is seen in the middle of the frame. At the lower left, a young girl is pulling the trash-receptacle. Several children are starting to run away from the area.



Still photo from surveillance video - Castaway is seen rounding the back of the pick-up truck and running toward the fenced area. Officers Traudt and Lara may be seen at the front of the pick-up truck. The young girl in the red dress is moving away from the receptacle and toward some other young people.



Still photo from surveillance video - Castaway is shown facing the officers, holding the knife to his neck. Officer Traudt is standing on the speed bump several feet in front of the trash receptacle. Officer Lara is standing next to the pick-up truck.



Still photo from surveillance video - Castaway, holding the knife to his throat, is seen advancing toward Officer Traudt who has backed up into the trash receptacle. Officer Lara is beginning to transition from his handgun to his TASER



Still photo from surveillance video capturing the moment at or just before shots are fired. Officer Traudt has retreated as Castaway continued his advance. Officer Lara has moved to the right. The officers are standing between Castaway and three people, one of whom is the young girl in the red dress.



Still photo from surveillance video - Castaway's body reacts to a gunshot. He has taken a step forward with his right foot. He will go to the ground at this location.




Knife wielded by Castaway



Castaway's knife – overall length of one foot



Castaway's knife – blade length of 7.5 inches.

	Case Number: 2015-393049 - Officer Involved Shooting	Date: 7/12/2015
	Location: 4501 W. Kentucky Ave. - Diagram Author L. Munoz (B13069) - Approved by W. Greene (B14008) on 8/31/2015	
Description: Approximate Path of Suspect		

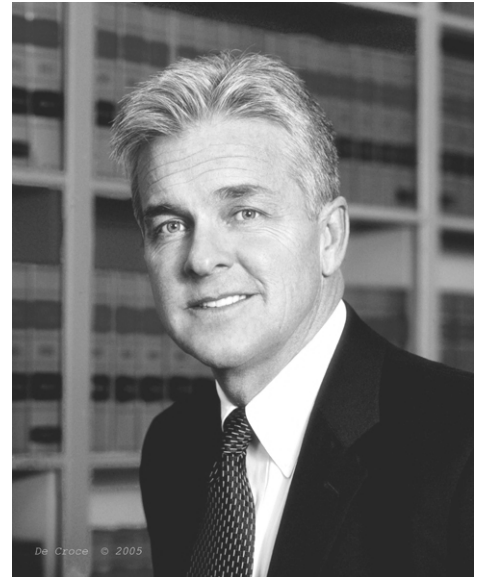


**Start: Where suspect first seen on video**  
**Green: Initial path of suspect**  
**Red: Path of suspect after seeing Officers**





## **OFFICER-INVOLVED SHOOTING PROTOCOL 2015**



*Mitchell R. Morrissey*  
*Denver District Attorney*

**T**he 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, headed by the Executive Director of the Department of Safety. The Executive Director of the Department of Safety ("Executive Director") 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 three decades, 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 assures transparency in these investigations. This serves to enhance public confidence in the process.

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 Major Crimes Commander, Senior 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, Executive Director, 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-recorded 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 video interview room was first used, each of these statements has been video-recorded. *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 -- is time consuming. 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. As a rule, 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-recorded 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 decision letter describing the shooting and the legal conclusions is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, the Executive Director of the Department of Safety, other appropriate persons, and the media. If the involved peace officer is from an agency other than DPD, the letter is directed to the head of that agency.

A copy of the decision letter is also posted on the Denver DA website ([www.denverda.org](http://www.denverda.org)) so that members of the public may learn the facts of the incident and the reasons for the decision of the District Attorney. At this time, the case file that is maintained by Denver District Attorney's Office is available and open to the public for review, unless a criminal case is pending concerning the facts of the shooting, and subject to the Colorado Criminal Justice Records Act. Allowing our file to be reviewed permits interested members of the public to learn more about the investigation; to verify that our description of the facts in the decision letter is accurate; to verify that our decision is supported by the facts; and to determine whether they wish to challenge our decision under C.R.S. 16-5-209. Allowing access for review is important to the transparency of our decision making in these important cases, and serves to foster public trust and confidence in the investigative process and in the decisions that are made.<sup>1</sup>

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<sup>1</sup> However, the complete official file of the investigation remains in the custody of the Denver Police Department, which is the custodian of the case

If criminal charges are filed against the officer(s), the charges are filed in compliance with the same procedures as any other criminal filing. In that event, the file maintained by the Denver District Attorney's Office becomes available and open to the public for review at the conclusion of the criminal prosecution in the same manner as mentioned above.

## 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.

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 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

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records. If we have made a decision not to file criminal charges, the Denver Police Department begins an *administrative* investigation and review of the incident. This may result in the gathering of additional information and the production of additional documents concerning the incident. The Denver District Attorney's Office is not involved in the administrative investigation and does not receive the additional information or investigative materials developed in that investigation. At the end of the administrative review, therefore, the files maintained by the Denver Police Department pertaining to the shooting will likely contain more information than the criminal investigation file.

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, an appearance of impropriety may exist if the Denver District Attorney's Office handled the case. This may cause our office to seek a special prosecutor.

## 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, although these certainly may be important in a case as well.

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 three 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 5 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. "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, and the "Colorado Criminal Justice Records Act" dictates that the public interest be considered before releasing criminal justice records.

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.

We encourage any interested person to read the decision letter in these cases, and if desired, to review the investigative case file at our office to learn the facts. We find that when the actual facts are known a more productive discussion is possible.

*Mitchell R. Morrissey*

*Denver District Attorney*

#### CONTACT FOR INFORMATION

**S. Lamar Sims**, Senior Chief Deputy District Attorney,  
Denver District Attorney's Office, 201 West Colfax  
Avenue, Dept. 801, Denver, CO 80202 720-913-9000

**Doug Jackson**, Senior Chief Deputy District Attorney,  
Denver District Attorney's Office, 201 West Colfax  
Avenue, Dept. 801, Denver, CO 80202 720-913-9000