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August 9, 2018

Paul Pazen
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Charles Baxter Boeh DOB 07/06/1981, in which Denver Police Officers Blake Bishop (badge number 14067), Andrew Nielsen (badge number 14076) and Keith Valentine (badge number 15060), fired shots on April 25, 2018, at the intersection of E. Colfax Ave. and Quebec St. in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the shooting death of Charles Baxter Boeh, in which shots were fired by Denver Police Officers Blake Bishop, Andrew Nielsen, and Keith Valentine has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against these officers. My decision, based on standards of criminal law, does not limit administrative action by the Denver Police Department where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply.

STATEMENT OF FACTS

On April 25, 2018, at about 4:48 pm, uniformed Denver Police officers were on patrol in the area of E. Colfax Avenue, when they learned via police radio that a bank robbery suspect was traveling in the area. The plain-clothes robbery detective informed other officers that the suspect was driving a silver Audi convertible and was currently driving westbound on Colfax near Ulster. The robbery detective asked that the suspect be arrested, and warned the uniformed officers that this suspect was considered "armed and dangerous." At the time of the attempt to contact him, the suspect was wanted for two armed robberies in Denver as well as a parole violation from Missouri. He was also suspected of six robberies in Missouri.

Acting upon this information, uniformed officers almost immediately located the silver Audi, which was on Colfax, traveling westbound and approaching Quebec in heavy traffic. Officer Valentine illuminated the emergency lights of his patrol vehicle, and the suspect, later identified as Charles Boeh, accelerated away at a high rate of speed, drove through some lanes of traffic, scraping some cars and tried to drive between two stopped lanes of traffic. He was unable to squeeze his car between the traffic lanes, and his car came to a stop after hitting cars in the traffic lanes. As the officer approached his car, Mr. Boeh appeared to be reaching down and trying to rack or reload a firearm between his knees. One officer described seeing him raise a gun toward officers who were approaching the blocked vehicle. Officer Nielsen called out that Mr. Boeh had a gun, and Officers Bishop, Nielsen, and Valentine fired their handguns, striking Mr. Boeh a total of sixteen times. Mr. Boeh's passenger, R.H.¹ was removed from the vehicle with minor injuries. She later gave a statement. She stated that she met Mr. Boeh in Kansas City, Missouri then drove with him to Colorado approximately three days before this incident. She said that they were in a hotel room together when she saw a large bag of money. When she saw this money, she realized that Mr. Boeh was a bank robber.

R.H. also said that on April 25, 2018, the police pulled in front of them and Mr. Boeh accelerated away from them. R.H. said that Mr. Boeh stated "I'm dying today!" She admitted that Mr. Boeh had a gun, and that she believed he had shot at the officers, shooting until he ran out of bullets. She said that during this incident, she sustained a grazing wound on her left arm.

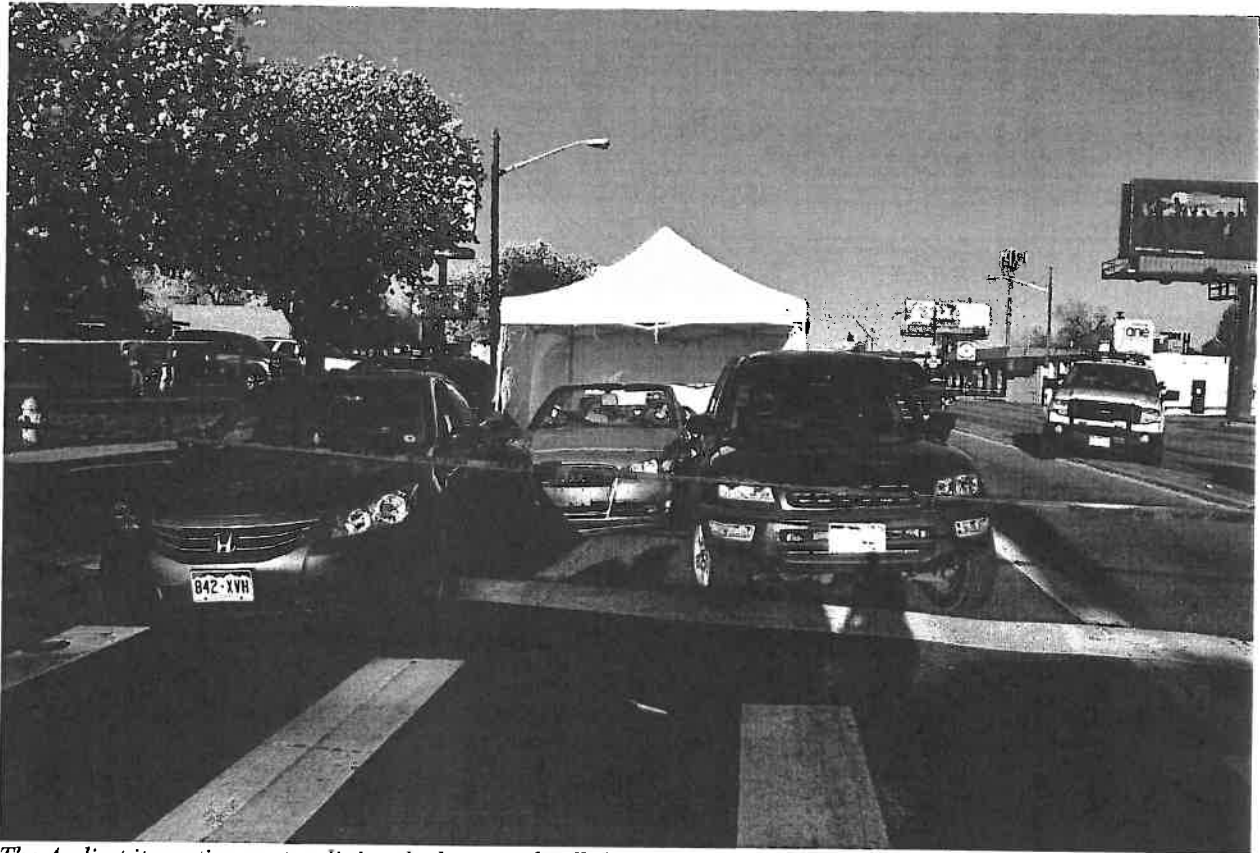
The Denver and Aurora Police Departments responded to investigate this incident. As is the protocol in such situations, the witnesses, including the officers, were separated and brought to headquarters to be interviewed. Officer Valentine gave a statement consistent with what other witnesses described.² He stated that as the information about the suspect vehicle was aired, he realized that the wanted party and vehicle were directly in front of him. Very soon after, a patrol vehicle with Officers Bishop and Nielsen pulled up next to him and the three officers communicated that they would attempt to pull over the suspect vehicle at that time. As Officer Valentine activated the lights on his patrol vehicle, he said "I started to get out of the car and then it kind of exploded from there.... The driver takes off, tries – attempts to split two civilian cars that were in lane[s] 1 and 2 stopped at this light."

Officer Valentine said:

There was a lot of traffic around. A lot of people around, and it was an extreme amount of speed. It was an extreme acceleration for that small of space. I mean like, extreme. And I very vividly remember when the car made impact in between the two cars, I clearly recall seeing the front end of the Audi go in the air, and I remember thinking to myself – because I saw their bodies rising out of the car – that they were going to be ejected. I mean that was the amount of force that was – that these – the impact was made.

¹ I use initials to maintain the privacy of civilian witnesses.

² Officer Valentine did not speak with other witnesses, nor did he watch any body-worn camera footage prior to his interview. The many civilian witnesses also gave statements that were consistent with what the officers stated in their interviews.



The Audi at its resting spot, splitting the lanes and colliding with the two cars in front of it

Upon seeing this, Officer Valentine aired that the officers needed additional officers to assist, and that they likely needed medics for the suspect and his passenger as well as for the people whose cars the suspect had rammed. Officer Valentine ran toward the Audi as the Audi was coming down from the near-ejection, and Officer Valentine saw “him dive for the center console, or the center area of the vehicle, and it happened so fast but while he – while he was down, he made it like – he made this really distinct – to me – movement with his shoulders.” He continues, “my assumption was that he was clearing like a gun, or attempting to clear a gun, just based off the movement in his shoulders. And then he comes back up.” Officer Valentine stated that he was coming up to the car on that car’s driver’s side. He stated:

I remember being at the back bumper on the driver side, and I’m hearing – it – I mean rapid and simultaneous – but I hear “gun, gun, gun” coming from the officer that was on the passenger side. He’s yelling “he’s got a gun! Drop the gun!” I’m coming up from behind him and then I hear gunshots and I felt a stinging in the side of my head.

When asked what Officer Valentine believed had hit him, he stated:

I mean my belief at the time was that I was under fire, my partners were under fire, and that they were going to be killed; or the countless people at Burger King, Subway, or the people that he had already rammed and put their lives in danger, that they were going to be killed.³

As a result of that belief, Officer Valentine discharged his weapon. He fired 3 times.⁴ When asked why he stopped shooting, Officer Valentine replied “I didn’t feel there was a threat anymore.” Soon after the shooting stopped, Officer Valentine was separated from other witnesses, then taken to the hospital. Officer Valentine gave his videotaped statement to Denver Police Officers later that same evening.

Officer Andrew Nielsen likewise provided a videotaped interview that evening. He gave an account that was consistent with what other witnesses had stated.⁵ He stated that as the officers attempted to stop the suspect vehicle:

I immediately was already exiting the vehicle and was in the process of drawing my weapon. At this point, I saw the driver of the silver Audi look over, identify us in fully-marked uniform and fully-marked police car. He decided to try to ram his way through traffic. He positioned his car in between the number one and number two lanes, and began to accelerate at a high rate of speed, ramming through probably three or four sets of cars.... The car appeared to get lodged airborne and get stuck, where it could no longer proceed through.

Officer Nielsen ran toward the passenger side of the suspect vehicle, stopping perpendicular to the driver, and approximately five to ten feet from the passenger door. Officer Nielsen said:

I was probably at the three o’clock position, so a 90-degree angle with the suspect – I could see him with his arms in a postured gesture down, as if he was holding something in between his legs. As I approached closer, I was able to see over the passenger side door. There was a female passenger, and then there was the male suspect in the driver seat. In between his legs, he had a firearm, and it looked as either if he was trying to fix a malfunction by the way he was moving his arms, or if he was trying to reload a firearm. I gave several verbal commands. I believe at first I yelled out – just so the other officers that were with me could hear – I said “Gun! Gun! Gun!” I told him “put down the gun!” And then I yelled at him a couple of times “Don’t do it! Don’t do it!” At which point he pulls his shoulders back and he looks directly at me and starts to turn.

³ Later, when events had calmed, Officer Valentine “pieced it together” and correctly concluded that he had been struck by glass from the windshield of Officer Bishop’s patrol vehicle when Officer Bishop fired from inside his vehicle.

⁴ Investigators determined this upon unloading Officer Valentine’s weapon at police headquarters later that night.

⁵ Officer Nielsen did not speak with other witnesses about these events.

Officer Nielsen reported that he was yelling his commands at the top of his lungs. He said:

I knew Officer Valentine was advancing. I didn't know how far he was going to advance. I didn't know if the suspect was going to be able to turn, so my thought process then was I need to eliminate the threat at that point. Also, in fear of everybody else around me, if this continued any longer, who knows if innocent bystanders would have been injured or shot or anything in the process. At that point, I fired – I can't say a number – a rough estimate anywhere between four and seven rounds⁶ into the center mass of the suspect. I watched the firearm that was in between his hands drop.

The female passenger was ordered out of the car, and Officer Nielsen ensured that the scene was secure before moving to a separate vehicle to prevent conversation with other witnesses. He was then transported downtown to headquarters to be interviewed.

Officer Blake Bishop, when interviewed that evening, likewise described the events in a manner that was consistent with other witnesses. He was the second officer, driving the patrol car where Officer Nielsen was a passenger. Officer Bishop stated that when Officer Valentine activated his lights, “the driver of that car, who they had identified as the suspect of this – of these robberies – he took off at a high rate of speed. Went around the front of my car and crashed into at least three cars...” He stated that he was still behind the wheel of his patrol vehicle when

I saw [Mr. Boeh] bring up his left hand and it looked like [Mr. Boeh] had a firearm in his hand, and it looked like he either put it to his head or started to turn around towards us to see where we were, and when – when he crashed was when I saw Officer Nielsen run around to the passenger side and I saw Officer Valentine run to the driver side, and he started to bring that gun down and I saw him look to his right, where Officer Nielsen was standing. And at the time, I saw him start to lower the gun – was when he looked, and that's when I deployed my weapon, in fear that he was going to try and shoot my partner.

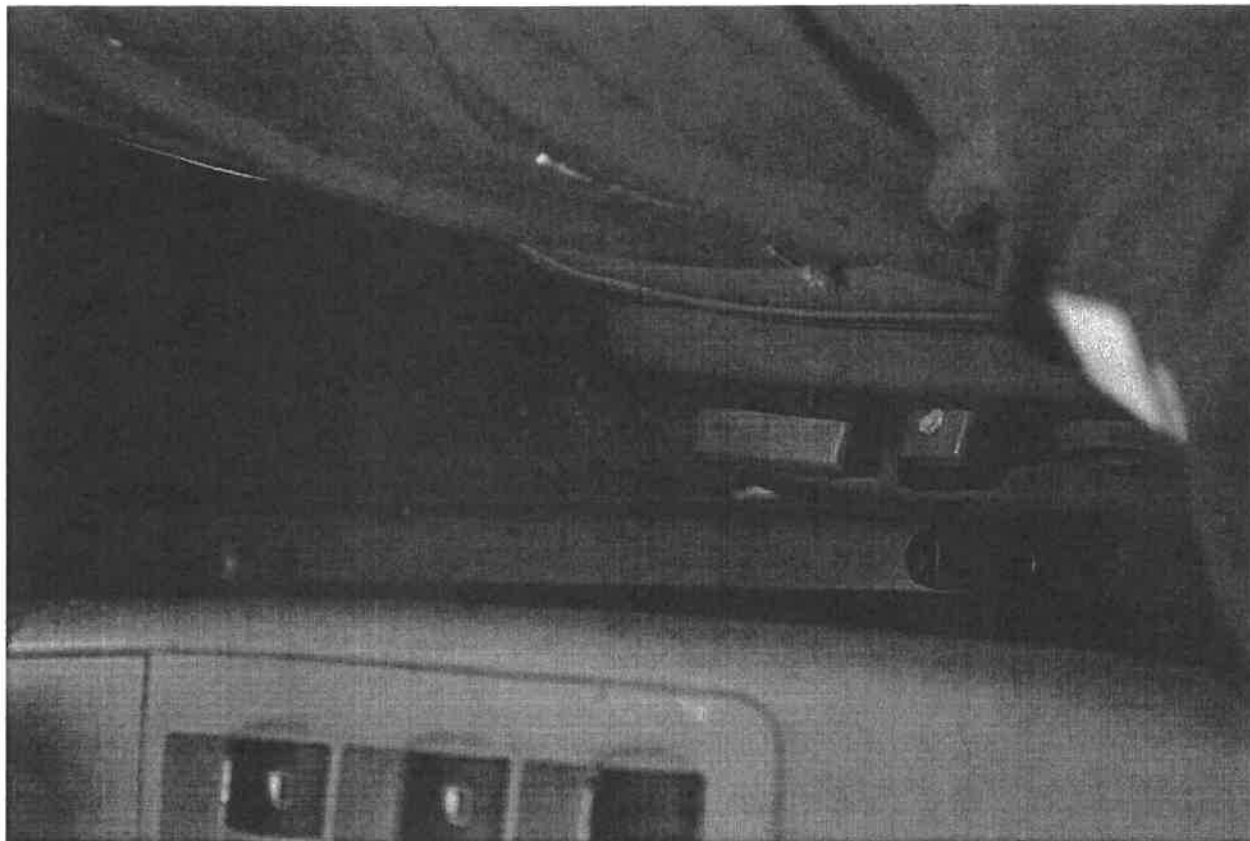
Events unfolded so quickly that Officer Bishop reported that he was compelled to discharge his weapon through the windshield of his patrol vehicle. He shot six rounds, and stopped shooting when “there was no other movement in the car.” When asked how much time passed from the time that he got behind the suspect vehicle and the time that the shooting occurred, Officer Bishop replied “I would say less than a minute.” He elaborated “It was very quick. I would say that the total time from when we pulled up next to Officer Valentine to when the shooting was over, I would say it was maybe thirty seconds. It was very, very quick.” After these events, as with the other officers, Officer Bishop was separated from other witnesses and he was then transported downtown to headquarters to be interviewed.⁷

Denver Crime Lab personnel responded to the scene and thoroughly documented it. Among many items of evidence, lab personnel recovered a Kel Tec .380 caliber semiautomatic firearm.

⁶ Upon unloading Officer Nielsen's handgun at police headquarters, investigators determined that he had discharged his weapon eight times.

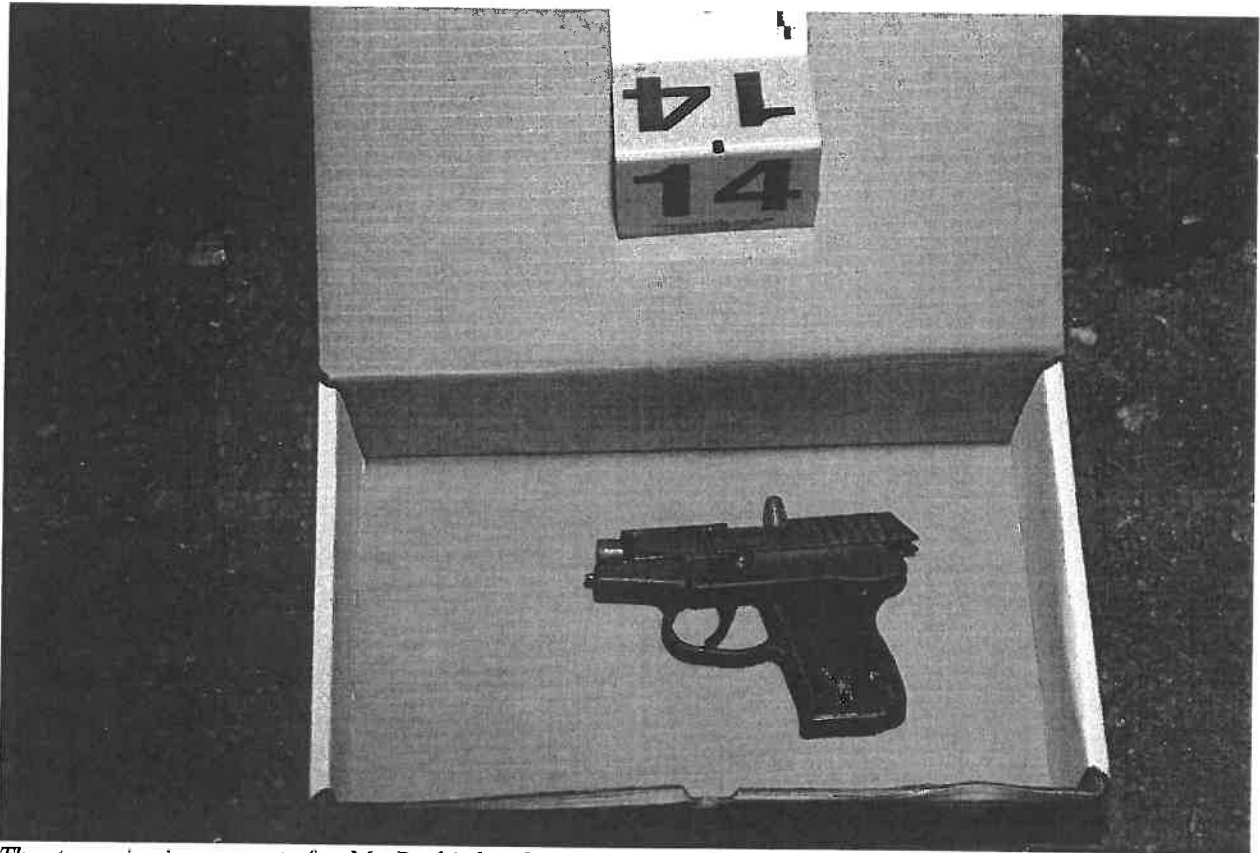
⁷ Officer Bishop did not review body-worn camera footage prior to his interview.

This handgun was located between the driver's seat and the driver's door in the Audi driven by Mr. Boeh.



The butt of the handgun can be seen on the lower right

Detectives noted that a live round was “stove-piped” in the ejection port of that firearm, meaning a bullet was jammed at a perpendicular angle to the barrel of the handgun. This fact explains the movements observed by officers immediately prior to the shooting: it is apparent that Mr. Boeh was trying to clear that malfunction to make his firearm operable.



The stove-pipe is apparent after Mr. Boeh's handgun is recovered from the Audi

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The justification of using physical force in self-defense is described in C.R.S. § 18-1-704. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

The use of deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.” C.R.S. § 18-1-704(2)(a).

The justification for a peace officer's use of physical force while attempting to make an arrest is described in C.R.S. § 18-1-707. As pertinent to this case, C.R.S. § 18-1-707 (1) states:

... 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 ... 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 effect such an arrest

C.R.S. § 18-1-707(2) states that:

[a] peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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 an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) has committed or attempted to commit a felony involving the use of threatened use of a deadly weapon; or...

(III) otherwise indicates ... that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

These justifications are "affirmative defenses." This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt, that Officers Bishop, Nielsen, and Valentine acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that these three officers *had* lawful justification to fire at Mr. Boeh in self-defense, in defense of others, and to effect the arrest of an armed felon.

Mr. Boeh was suspected of six robberies in Missouri and was wanted for a parole violation from that state. He was positively identified by task force officers as the party responsible for at least two armed robberies in Denver. Further, Mr. Boeh, in his attempt to evade capture, put the lives of dozens of other citizens at risk. These Denver Police Officers were justified in using deadly force to effect the arrest and prevent the escape of Mr. Boeh.

Once Mr. Boeh trapped himself between the civilians' vehicles, and it became apparent that he would not succeed in his escape, he retrieved a handgun, worked the slide, then at least one

officer believed he saw the gun raised toward Officer Nielsen. At that moment, three separate officers concluded that lives – theirs and those of the many citizens in the vicinity – were in immediate danger, and nearly simultaneously discharged their weapons; these conclusions were objectively reasonable.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

Graham v. Connor, 490 U.S. 386 (1989) at pp. 396-397.

Under these dangerous circumstances, Officers Bishop, Nielsen, and Valentine were forced to make split-second judgments, and their decisions to shoot Mr. Boeh in self-defense and in defense of others were justified under Colorado law. The use of deadly physical force was also justified to effect the arrest of a felon who the officers believed had been involved in a bank robbery involving the use or threatened use of a deadly weapon.

Sincerely,



Beth McCann
Denver District Attorney

CC: Officer Blake Bishop; Officer Andrew Nielsen; Officer Keith Valentine; Troy Riggs, Executive Director, Department of Safety; Barb Archer, Deputy Chief; Ron Saunier, Division Chief of Administration; Kathleen Bancroft, Commander of District Two; Mark Chuck, Commander of Major Crimes Division; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Bruce Gibbs, Detective Homicide Unit; Kristin Bronson, Denver City Attorney; Nicholas E. Mitchell, Office of the Independent Monitor and John Davis, Davis Law Firm.