

**REVIEW OF DEADLY FORCE
POLICY AND PROCEDURES**

ANALYSIS OF THE SPOKANE COUNTY SHERIFF'S
OFFICE

*Use of Force Policy (300) ,
Shooting Policy (304) and
Officer-Involved Shooting Policy (310);*

and

*A Protocol to Investigate Officer-Involved
Fatal Incidents in Spokane Count (Revised 6/23/10);*

and of

The shooting of [REDACTED]
by Spokane County Deputy [REDACTED]

Respectfully prepared and submitted by:

[REDACTED]
[REDACTED] 2011

BACKGROUND FOR THIS REPORT

In the wake of the shooting of [REDACTED] by Deputy [REDACTED] Sheriff [REDACTED] asked me to review the Spokane County Sheriff's Office Protocols and Procedures. I was to analyze them from the perspective of my training in critical thinking and analysis as a philosopher and, in particular, my training and experience as an ethicist. Also key to his request was my experience with State and Local Governments in the area of governmental ethics. In those capacities, I was to question policies, procedures, the particular incident and investigation of the case of [REDACTED], and present my conclusions in this report.

I made sure that Sheriff [REDACTED] understood two things. First, I would report my findings and analysis whether it turned out to be positive or negative and regardless of the light in which it put the Spokane County Sheriff's Department. Second, at the end of the process, the report would be submitted to the media, for public scrutiny and, again, whether it was positive or negative, though I would allow him to first review it for accuracy. He agreed to both conditions.

While civil matters are often adjudicated on the basis of "a preponderance of the evidence," criminal cases commonly require proof "beyond a reasonable doubt." The State of Washington specifies a different requirement under some of its laws - "clear and convincing evidence." This is essentially the same as a requirement of proof beyond a reasonable doubt since a reasonable doubt should be the result of clear and convincing evidence. An analysis of the evidence, then, is key to determining justification or lack of justification for the actions of a law enforcement officer.

Further, while it is the duty of the law enforcement officers and the courts to consider an individual innocent until proven guilty, I was under no such constraint in my analysis, in my investigation of the shooting of [REDACTED] or my review of the Spokane County Sheriff's Office's Policies and Procedures. In fact, I took the opposite stance, much like a prosecutor attempting to build a case against an individual. I analyzed the policies and procedures as though I believed them flawed and the specific case as though the officer was guilty until proven innocent. I pursued my analysis by questioning all the documents and evidence anew and by doubting the conclusions that had been made by all of the investigators in this particular shooting incident.

As related to policies and procedures in particular, I did not look for what appeared to be good policy concerning procedures. Instead, I looked carefully for existing areas and recommended actions (procedures) that seemed to be inadequate or in error both when compared to the existing policies as well as in and of themselves.

Finally, joining both the general and specific, I attended all of the Citizen Review Board meetings that took place during my investigation and analysis. I not only monitored their process but took part in it, asking my own questions. I also analyzed the dynamics of that group consistent with my doctoral work in Organizational Leadership.

SPOKANE COUNTY SHERIFF'S OFFICE POLICY MANUAL POLICY 300
USE OF FORCE

300.1 PURPOSE AND SCOPE

Recommendation 1:

I believe it is the *policy* to which this phrase applies: "While there is no way to specify the exact amount or type of reasonable force to be applied in any situation. . ." I assume that the Department does not want it to perhaps imply that an exact type or even possibly an exact amount of reasonable force can *never* be determined. Certainly, that very determination will be made by numerous entities – the Fatal Shooting Incident Task Force; the Citizens Review Board; perhaps the Courts, including Federal Courts; and most certainly by the Public. But they will be made *after the incident*.

I believe that this statement in the policy must be modified to clearly apply only to policy and not to any evaluation of an incident. Written policy is a guideline; evaluation of an officer's actual use of force is a judgment, not a guideline. Further, this would make it consistent with Policy 300.2: "Given that no *policy* can realistically predict every possible situation a deputy might encounter in the field... (emphasis added).

I suggest adding a phrase to the end of that sentence. For instance, the sentence could be changed to read, "...no way to specify the exact amount or type...*in a policy document*" or "...*in a general policy.*"

Recommendation 2:

No reason is given for there being "no way to specify the exact amount or type of reasonable force." Law enforcement officers understand the reason this not possible. I am not as sure that everyone else who reads this policy would understand the reason.

While this is a policy document *for* law enforcement officers, it is also a public policy document. One of the things that means is that it is more than a guideline for officers. It is also the guide to which something akin to the administrative or executive branches of so many government entities, including the Spokane County Sheriff's Department, will use in making decisions. After the *administrative review*, the Sheriff (*executive branch*) will decide what action the Department will take, given the administrative review of all information available in a particular case.

There are too many variables, including what an officer did not know, to list the appropriate amount of force in each and every possible situation that a law enforcement officer may find him/her self. Grouping them under more general *types* of crimes is not a solution, either. One example of this is domestic violence calls.

An officer has to assess what he/she can - they can't read minds. Thus, if an officer encounters a deaf individual or someone who is having a reaction to a prescribed medication, his/her response, including the use of force may need to be assessed with that particular fact in mind. However, there are also instances that a law enforcement officer did not and could not know. For example, a non-compliant individual may be wearing a cast under his/her clothing that the officer does not see and of which the officer was not advised. The cast may keep the individual from fleeing a scene, but while the officer

might have realized it, it may not be reasonable to believe that he/she *should* have known it.

This is only one class or type of variable that makes judging the amount of force that should have been used either appropriate or not. Using force on an individual may, then, be reasonable - though only for compliance with commands that are reasonable to believe are necessary to the safety or life of one or more individuals. Whether the actual force used was reasonable cannot be specified prior to the details of a particular situation being known.

The statement could be modified by adding something like: "This determination can only be made after a complete investigation sheds light on all the relevant variables in any particular case."

300.1.1 PHILOSOPHY

Recommendation 3:

In keeping with the acknowledgment of the use of force as a "matter of critical concern...to the public," I recommend the addition of a phrase such as "This policy recognizes that the use of force by law enforcement requires constant evaluation *both by the department and the public whose interests it serves.*"

300.1.2 DUTY TO INTERCEDE

Recommendation 4:

Note should be made of the possible consequences of failure to follow this portion of the policy. Is it grounds for discipline? Is it grounds for dismissal? Is the officer considered equally guilty with the offender? This could be done by specific reference to the Disciplinary Policy(340).

While I realize that the interconnections between Departmental Policies are too numerous to always cite every other policy that may apply, I recommend that it be included at this one point so that the public, especially, has direct and immediate reference to it if they are the ones reading it. Is is, after all, essentially *their* policy document - being the Public and Law Enforcement being a Public Service provided by taxpayers for the benefit of all in our society.

300.2.1 USE OF FORCE TO EFFECT AN ARREST

Recommendation 5:

Question whether an officer "may use all necessary means to effect an arrest," since a balance with the conflicting rights and/or safety of others in the vicinity should (must?) also be considered. For instance, it may be necessary to perform a PIT maneuver in order to arrest the driver. However, if the car contains passengers in the car include two small children or the pursuit were to take place in a school zone, the maneuver may be necessary but, at the same time, unreasonable. This may be especially true depending on the severity of the crime. Similar considerations may need to be made in other than these contexts, as well.

Reason, I suggest modifying this phrase to include the word "reasonably," e.g. "may use all necessary means to effect an arrest."

300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

Recommendation 6:

This section outlines some of the conditions of reasonableness referred to in recommendation 5. However, without delineation between necessary and reasonable or some indication of how they interact, it is not clear that these two sections are not contradictions of each other.

300.2.3 NON-DEADLY FORCE APPLICATIONS

Recommendation 7:

The first sentence is ambiguous and should read "Any application of force that is not reasonably anticipated OR intended to create..."

300.2.4 PAIN COMPLIANCE TECHNIQUES

Recommendation 8:

Again, there is an ambiguity between reasonableness and necessity. As written, as long as the deputy "reasonably believes" that such action is "necessary," then the action is allowed. However, while the deputy him/herself may have reason to believe an action is necessary, it is not that belief that renders it necessary. As well, the policy states that it shall be discontinued once the deputy determines that compliance has been achieved. However, again, it is not the deputy's belief that makes continued application of the technique reasonable or necessary. Rather, there are standards against which this decision will or may be judged in the courts. This section needs more careful clarification as this is the exact situation that has repeatedly placed law enforcement officers in the courts, at times finding against them, even if they happened to believe that the compliance technique was reasonable/necessary. For instance, and this reflects one case of which I am aware, when the suspect did not comply because, as a result of the officer's use of a taser, the officer was found not to have the right to continue to apply pain compliance techniques – despite the fact that he determined that compliance had not been achieved.

300.2.5 VASCULAR NECK RESTRAINT (VNR)

Recommendation 9:

Both this section and the one proceeding it refer to "successfully completed department-approved training." I would advise that records of the training that each officer has received be a matter of public record, if they are not already so. I would further advise that the department proactively keep the public informed of training that is offered to officers and what percentage of the department's officers have completed it. If the department is reticent to do so because it may show the department in a poor light, I suspect that this means either that the percentage needs to be better clarified or that more officers should be receiving said training. For instance, if only 80% of the department has received training, it may be that only 72% would ever have occasion to use it. The statistics should reflect the likelihood of use.

Any member of the public can make a public records request. However, I believe it is important that the Department proactively get these percentages out to the public - through press releases, on the Department's website, in the news if possible,

300.4 Note only: Review use of commas in this section.

300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE

Recommendation 10:

The instruction should be that such persons as are referred to in the second section "shall" be examined by qualified medical personnel, not that they "should" be.

Note only: no "s" need be added to "person" since "any person" includes all.

300.5 SUPERVISOR RESONSIBILITY

Recommendation 11:

If one of the duties of a supervisor is to insure that the involved deputy(s) are removed from the scene, at least in some circumstances, this should be added to policy. I realize that there are times that a supervisor is not able to immediately respond, given that he/she also has other responsibilities and must prioritize them. However, it is still the supervisor's responsibility (or that of his/her delegate) to assure that the deputy has been removed from the scene as soon as any tactical or other necessary debriefing of the involved officer(s).

SPOKANE COUNTY SHERIFF'S OFFICE POLICY MANUAL POLICY 304
SHOOTING POLICY

304.1 PURPOSE AND SCOPE

Recommendation 12:

It is unclear why this policy but not the use of force policy contains a caveat concerning the application only for internal use. In comparing this policy with the RCWs, it appears that many of them are requirements that must be met by law. Violation would neither increase nor decrease liability.

Recommendation 13:

It is not clear, as it was in the previous policy, whether these are rules or guidelines and since this is a different (though related) policy, that needs to be specified.

304.1.1 POLICY

Recommendation 14:

Here, the specification is that the use of a firearm must reasonably appear to be necessary, in addition to other specific conditions. This is in stark contrast to the subjective specifications found in the Use of Force Policy at 300.2.4., as noted in prior recommendation. Again, ambiguity or the reason for the () ing requirements need to be delineated.

304.1.1 Note Only: "Where feasible" appears to need correction to "if feasible," as is the case in 304.1.2

304.1.4 REPORT OF WEAPON DISCHARGE

Recommendation 15:

Reference is made to "Fatal Incident Protocol" but the protocol is differently titled in the documents given to me for analysis. Specification should be made by the proper and specific title and revision date. The policy documents should also reflect any change made to Protocol title and revision date.

SPOKANE COUNTY SHERIFF'S OFFICE POLICY MANUAL POLICY 310
OFFICER-INVOLVED SHOOTING

310.2 INVESTIGATIONAL RESPONSIBILITY

Recommendation 16:

Again, it is not clear, as it was in the previous policy, whether these are rules or guidelines and since this is a different (though related) policy, that needs to be specified.

Recommendation 17:

Reference is made to the "Officer Involved Fatal Incident Protocol" (in prior section the reference was made to the "Fatal Incident Protocol") Again, these references should be to the document, as specifically named. As well, if this is intended to be a reference to the same document as in 304.1.4, both references should be to the document with the same name, including the date and any revision dates.

310.3 TYPES OF INVESTIGATIONS

Recommendation 18:

Use of the phrase "may include" seems to indicate that there may also be others, though perhaps it is meant to indicate that any or all of these types may be used. Whatever the case, this should be made clear.

310.4 JURISDICTION

Recommendation 19:

Assume this means jurisdiction of the investigation. In any event, what it is jurisdiction over should be specifically stated.

310.4.3 SPOKANE COUNTY SHERIFF'S OFFICE DEPUTY IN ANOTHER JURISDICTION

Recommendation 20:

Given the Fatal Shooting Protocol, I question whether the agency that has jurisdiction is responsible for a criminal investigation when this investigation has been relinquished to another agency. This claim is important in terms of risk management as well as informing the public (to the extent they can/will be informed). Again, it should be made clear that the timely administrative investigation is only of incidents in the jurisdiction of the SCSO, as the reference to so many agencies and entities is confusing.

Recommendation 21:

Any understanding that an administrative investigation is performed only after the completion of another investigation. Whether not this is the case, any timing of investigations should be clearly stated.

310.4.4 INVESTIGATION RESPONSIBILITY MATRIX

Recommendation 22:

Although the document refers to these scenarios and responsibilities as "possible," it is not clear whether this is an exhaustive list of the possibilities or there are also other possible scenarios. This needs to be clarified.

Recommendation 23:

Again, reference to "Officer involved fatal incident protocol" needs to be consistent with all other references to the same document, within the policies.

310.5 THE INVESTIGATIVE PROCESS

Recommendation 24:

Since the reference is to these as guidelines and the Purpose and Scope (310.1) of this policy does not specify the whole policy as guidelines, the reference at this point further adds to the confusion. Either the whole policy is a guideline or only this portion is. I am unsure why the rest would be guidelines rather than rules, in the first place, but if that is the intent of this and/or any other portion of a policy, this needs to be clearly specified both here and in Section 310.2. It might, for instance, be an adaptive reiteration of the wording in 300.1 - "While there is no way to specify the exact (adaptive phrase) the Department will use these guidelines to conduct an investigation in a professional, impartial and reasonable manner."

310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR

Recommendation 25:

I suggest reconsideration of the word "should" relative to the intent of this section, as I do not know if it is intended to be a recommendation or a mandate.

Recommendation 26:

Given recent incidents, I think it advisable to mention the general reason(s) that these statements must be limited and any other statement by an involved deputy must be voluntary. For instance, is this State law? Federal law? A specification of union contract? Departmental Policy? County Policy?

Recommendation 27:

Again, watch the wording carefully, as this can be relevant in the courts. Do you mean to state that the Incident Commander shall be or will be responsible? If this is only a guideline, one is more appropriate than the other (though it would be up to the legal department to decide which word is appropriate to the situation of this document). This same recommendation applies throughout the remainder of the document, as well.

Recommendation 28:

How is needed to assure that each and every one of these steps is fulfilled and that command staff is aware of the requirement to do so (unless, perhaps, this is only a guideline).

310.5.4 MEDIA RELATIONS

Recommendation 29:

The requirement of a single press release is troubling, though any press release should be vetted as specified in the policy. Rather, press releases should be released as information becomes available that can be shared with the public. Further, I have often heard objections in several venues to law enforcement "withholding information." Better explanation needs to be made to the public concerning the reasons why some information is not appropriate to release at particular times and under particular circumstances. I suggest that it would be helpful to use examples from a closed case to make this point.

310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION (all sections)

As concerns the investigation of a shooting incident and in combination with "A Protocol to Investigate Officer Involved Fatal Incidents in Spokane County," they are nearly exhaustive.

Recommendation 30:

I suggest that immediate and mandatory notification of the Prosecutor's Office be added to the requirements. This allows the Prosecutor's office to be involved from the very beginning of the incident, if that is the choice of the Prosecutor.

310.7.1 CIVIL LIABILITY RESPONSE

Recommendation 31:

This section needs to specify that the individual assigned to work under the direction of the Department's legal counsel may not be a law enforcement officer. There are several reasons for this. An assigned member other than a law enforcement officer would be able to access the same information; direct involvement of a law enforcement officer in the production of attorney work product holds the potential for conflict of interest and/or, at the very least, is likely to create this suspicion in the minds of the public. It is my opinion that this policy needs either to be changed or, if that is already the intent, it needs to be clarified.

The final paragraph of this section is especially troubling. If, in the process of generating these materials, the appointed individual uncovers evidence for which an officer should be prosecuted, he/she should not be allowed to use it for this purpose. Despite the fact that (it) "is not intended to interfere with any other investigation," the way it is stated could lead to this exact result.

GENERAL:

I am not sure that you can hold officers accountable for not following guidelines, though I am sure that you can hold them accountable for failure to follow policies other than those that are specified or intended to be guidelines. As a matter of risk management, if for no other reason, this needs to be considered in any possible modifications to policies, assuring that they are not policies only but also intended in procedures to the greatest possible degree.

CONSIDERATION OF THE FATAL SHOOTING OF [REDACTED]

Personally, I found references to objective vs. subjective considerations to be both vague and confusing though, in questioning further, I understand them. These also need to be clarified to the public, since this is technically also a public policy document.

In particular, objective considerations do not take account of particular circumstances that may differ from person to person. The latter are subjective considerations. For instance, whether or not a gun has been fired is objective. Regardless of the individuals involved, regardless of whether the shooting was accidental or intentional, either the gun was fired or it was not fired.

Subjective considerations take particular circumstances and facts about individuals into account. Some of these would be disability, the language spoken, training, the presence of minors, heavy traffic, skills, the time of day (amount of light), and the experience of those involved.

As an example, it may be reasonable to assume that a young citizen who is suspected of a crime but turns to flee rather than ask a law enforcement officer's questions and, therefore, to tackle and restrain him/her. However, if the suspect is elderly and using a cane, the same assumption and response would probably not be reasonable. Age and disability are subjective considerations because they are relevant in particular situations but not in others. Objective factors apply to all and every case that law enforcement encounters. Whether or not an individual actually has a disability is an objective consideration. The possible difference it made in this particular incident, is a subjective consideration.

Similarly, in using subjective standards, the question is not what the "average person" would or should do (or not do) or even what any reasonable person would do. These are objective standards that should not generally be applied to particular persons - all of whom vary and some of whom may vary in relevant ways of which the officer should (not could) have known.

Rather, the question to be answered is, inevitably, a subjective one, e.g., what any other person in this particular law enforcement's circumstances would/should have done. The term "subjective" refers to subjects (persons); "objective" refers to objects. Age is objective; the difference it makes in the case of a particular person is subjective - it depends on the subject.

Further attention should be called to the opposite consideration - the unreasonableness of the actions of an officer and/or victim. Even further, consideration needs to be made on the basis of doubt being reasonable and this includes reasonable doubt of the reports made by officers, victims, and witnesses. For instance, reasonable to doubt the statement of five independent witnesses when they all make the same claims? The usual and quick answer would, I suspect, be that it would not be reasonable to doubt their claims. However, if all five had served time in prison, it would be more reasonable to doubt their statements. This does not warrant discounting them, as five previously convicted criminals may still be telling the truth. However, more doubt should obtain in this kind of circumstance than in others. Doubt would be more common. (Note, again, that these are important subjective considerations, since they do not apply in all cases in which an officer may use a firearm)

In considering this particular case, the crucial questions are not what you or I would (or even I) have done but what a reasonable person in the positions of the individuals involved should

have done. Obviously the answers to these questions are the same if what one should have done is what that individual did. However, the crucial question is not what you or I would or should have done in response to the victim in this case but, rather, what a reasonable person *in the deputy's position* should have done and whether or not that is the same as what he did. The answer is likely to be different than it would be for someone who is not a law enforcement officer and I found that to be the case, though not in the way I expected when I began my analysis.

First, however, I want to address some of the various possible scenarios that have been advanced concerning the events in this case:

- (1) For all we know, Deputy [REDACTED] was engaged in criminal activity when he was discovered by the property owner, who was then shot by Deputy [REDACTED] to cover his criminal actions.

Because the time of the Deputy's arrival on the property is a matter of record and his logging onto his computer and what he did while on the computer are also a matter of record (though each key stroke is not), it is not reasonable to believe or even entertain such a scenario.

- (2) If Deputy [REDACTED] employed his baton as he states, perhaps his firearm accidentally discharged, in the process.

The pattern that would be left on his uniform after such a scenario is absent, as is post mortem evidence from the gunshot wound which, instead, confirms the distance that Deputy [REDACTED] reports between he and the victim at the time of the shooting.

- (3) Maybe the victim came up to Deputy [REDACTED] car door and, surprised, the Deputy acted instinctively and shot the victim, failing to assess the situation more fully before the shooting.

Again, the pattern that would be left on his uniform in such a scenario is absent, as is evidence that would be on the patrol car and post mortem evidence from the gunshot wound which, in fact, confirms the distance that Deputy [REDACTED] reports between he and the victim at the time of the shooting.

- (4) The gun may have been a "plant." Officers allegedly do that "all the time" to cover their mistakes.

The family of the victim confirm that the gun belonged to the victim.

- (5) It is possible that the victim had not yet gotten his gun fully placed in his rear waistband when Deputy [REDACTED] struck him with the baton and when the victim instinctively attempted to regain his balance, the firearm was still in his hand, though he never intended to use it or threaten a law enforcement officer with it. Or, perhaps it fell out of his waistband due to the baton strike and, while Deputy [REDACTED] saw the gun at that time, he failed to realize that it was no longer in the control of the victim.

Group these two scenarios together because the answer to them is the same. According to Deputy [REDACTED], he told the victim to put the gun down and the victim did not comply. Regardless of whether the gun was in the victim's back waistband, in his hand, or what his

intentions were, he was still armed and, as such, a danger to the officers safety and life. When an officer gives a citizen a direct order, the citizen must follow it, and if the citizen believes his/her rights have been violated in demanding such action, the place to address that situation is in the courts, not with police officers, any of whom have good reasons to request that a citizen put down their firearm or, if the citizen fails to do so, disarming them by use of force.

(6) Deputy [REDACTED] use of his baton, precipitated the escalation of this incident.

Even if the baton strike was the reason that [REDACTED] tried to pull his gun from behind his waist, the reason for the baton strike was that [REDACTED] was still armed. One could just as fairly claim, then, that it was [REDACTED] carrying of a gun in the presence of a police officer and not placing it on the ground - either in response to an order or not - that precipitated the baton strike.

It is in light of the these and other factors that I return to the questions: What would/should a reasonable person *in the deputy's position* have done, what *should* he have done, and are the answers the same or reasonably and relevantly close in both cases?

Deputy [REDACTED] was sitting in an unmarked car at night in the open parking lot of a privately owned business. It was not by choice that he was in that particular car. The one assigned to him that evening [REDACTED] led so bad that he checked out a different one. This is a matter of objective record. He had arrived [REDACTED] shortly before the incident and parked in that location because it afforded excellent visibility of the street when a citizen had reported her concern that individuals who had threatened her son would arrive. In other words, it was not by accident but because of concern for citizen safety that he was parked where he was. Further, though it was private property, it was a parking lot that was open to the public, even at that time of day. There were no barriers or signs precluding anyone at all from parking there. Deputy [REDACTED] did nothing that he should not have done and there was nothing that he should have done that is absent in these facts. A reasonable officer in his position may have done the same thing and is certainly allowed, both legally and ethically, to do so.

Deputy [REDACTED] states that he only noticed the victim approaching his car a very short time before the victim arrived at it. In response, he told the victim to back up, which he did, then he told him to put the gun down, which the victim did not do.

It has been proposed that Deputy [REDACTED] gave none of these verbal instructions and though I find his claims completely consistent with all of the evidence at the scene, there is no way to prove or disprove his claims concerning these statements. He cannot be considered guilty until and unless he proves himself innocent in a court of law, so since there is no evidence whatsoever that counters his claims, he remains innocent of any suspicion about this conversation or what may have actually taken place.

However, since I am not constrained by the requirements of the courts, and for the sake of argument, I assumed that he did not warn the victim and, instead, threw open the car door, forcing the victim to step out reflexively and that he did not employ his baton but, rather, shot the victim at that point. It was at that structure that I asked "What would a reasonable person in the deputy's position do?" And, in answering that question, I turned to the training of other officers as well as the Department's training manuals.

If someone approaches a police car with gun in hand, it is reasonable for a law enforcement officer to be concerned for his/her safety and even life. Caught inside a car, and despite his/her training and skills, it is nearly impossible to employ any tactical maneuver whatsoever. At this point, then, even before anything else is said or done, it may already be reasonable for a law enforcement officer to shoot the individual who approached the car, gun in hand. Yet, based on clear and convincing forensic evidence, Deputy [REDACTED] did not shoot from within his patrol car.

At this juncture, the question arises concerning the victim's knowledge that the car was, in fact, a law enforcement vehicle. Nearly everyone with whom I have spoken claims that they would recognize an unmarked car as a law enforcement vehicle, especially at that close range. Regardless, and since the opinion of "everyone" may not be adequate justification, once the victim approached the car even more closely, it is unreasonable to believe that he did not see the light of Deputy [REDACTED] computer or the many pieces of equipment within a law enforcement vehicle that make it easily identifiable as such.

The question must also be asked from the perspective of one approaching the vehicle. Is it reasonable for a citizen to approach a police car with a gun drawn, in hand? If I assume, contrary to reason, that the victim still did not realize that it was a law enforcement vehicle, once the deputy exited the vehicle, which forensic evidence proves he did, there no question that the victim knew he was a law enforcement officer, as he was dressed in full uniform.

in, I pose the question of a hypothetical reasonable citizen, this time with gun in hand but having realized that the car belonged to a law enforcement officer who now stands before him in uniform. Is it reasonable for a citizen to continue holding a gun in hand in the presence of a police officer? Even assuming that Deputy [REDACTED] did not instruct the victim to drop the gun as he claims, despite the fact that the evidence leads to no reason to doubt his claim, I believe that a reasonable person in this position would be concerned over the possible response of the law enforcement officer and either drop the gun or bend down and put it on the ground, assuring the officer that he/she did not intend to use it, at this point.

Thus, regardless of the veracity or reliability of Deputy [REDACTED] memory of what he and the victim said, it remains that the actions of the victim must have been unreasonable and the shooting by the Deputy was reasonable, given his position as a law enforcement officer. He encountered a citizen with a gun in his hand who had not put it down, regardless of whether Deputy [REDACTED] ordered him to do so. If the victim was ordered to do so and did not, there is even more justification for the shooting, though it is justified, even without it.

Here, I return to the possible difference between what a law enforcement officer did in this particular circumstance (including both his own training and the appearance of the victim) and what he should reasonably be expected to have done. It is this difference that I did not expect to find when I began my analysis.

Conclusion is based on the evidence – including the initial photos of the scene and car driven by Deputy [REDACTED]; on extensive documentation – all of the "official ink" connected to the incident with the exception of the detailed autopsy report (it is protected by HIPPA laws); unscripted and spontaneous opinions of the subject matter experts in their respective fields - training, dispatch, command, et. al.; questions that were not asked specifically but occurred to me in the process of my own analysis. In the latter case, for instance, I even considered the possibility that the victim's position within a

particular religion could have been a factor. This was easy to answer, as one of Deputy [REDACTED] first questions of the officer who arrived on scene within minutes of the incident concerned the identity of the victim. If Deputy [REDACTED] did not know who the victim was then it could not have influenced his behaviors on that occasion.

As difficult and controversial as it may be, when an individual who is holding a firearm approaches a law enforcement vehicle, it is reasonable for the officer to shoot the individual at some point during the approach and clearly reasonable when it must be the case that the individual holding the firearm knows and must know that the vehicle is occupied by a law enforcement officer. An officer in a patrol car is at increased risk by the very fact of being in the vehicle rather than outside of it, where he/she has more freedom and therefore more options concerning how to safeguard his/her own life.

Yet, Deputy [REDACTED] did not shoot, at this point.

Once the officer exits the vehicle, it is reasonable to expect an armed individual to put a firearm down. Failing to do so, even by holstering the weapon, leaves the officer's life at risk from the firearm being re-deployed.

Yet, Deputy [REDACTED] did not shoot at this point.

trajectory of the single bullet that was discharged from Deputy [REDACTED] firearm might lead one to believe that it was not fired while the victim was standing straight. This is one possibility, though it is not what Deputy [REDACTED] reported. Nevertheless, it calls attention the possibility that, just as witness statements are not always consistent with video of events, human memory is also fallible.

Another possibility, for instance, is that the barrel of Deputy [REDACTED] gun was inadvertently tipped in a downward position at the time he fired. This, too, could account for the trajectory of the bullet. I am sure there are other possibilities, but the entry wound is clear evidence that the shot was fired from several feet away and not at close range, which would be more likely the case if it was fired accidentally or in the process of other physical confrontation. And, in the case of physical confrontation, in this case from an alleged baton strike, it is reasonable for a law enforcement officer to be concerned for his safety and his life.

Yet, Deputy [REDACTED] did not shoot at this point.

rather, Deputy [REDACTED] reports that he fired only when he saw the gun coming out from behind the victim. Whether the victim was holding it, as Deputy [REDACTED] stated, or it was falling out of the victim's rear waist band is irrelevant since it is reasonable for a law enforcement officer to use his/her firearm when a gun re-appears in the midst of an incident in which it is reasonable for the officer to be concerned for his/her own safety or life.

Regardless, and even if the victim's gun never left his rear waist band once he placed it there, Deputy [REDACTED] was facing an armed individual and had reason to believe that individual was dangerous by that fact, alone. Whether Deputy [REDACTED] ordered the victim to put the gun down and this was not followed or, despite his claim, Deputy [REDACTED] did not give this order, it remains that the victim was armed - unless one posits that the shot was fired for no good reason, at all.

FINAL CONCLUSION

Finally, as an ethicist, I have to turn to the question of who was at fault in this situation. Ethical fault is not necessarily identical to legal fault. Though one may hope that what the law states is ethical, in fact and in practice this is not always the case. Thus, one who is at fault must also be responsible though one who is responsible is not necessarily at fault.

Who, then, was at fault – possibly aside from law - was it the victim or the Deputy? Public opinion seems to gravitate toward one or the other of these possibilities, with the possible exception of those who have not or believe they cannot decide.

Yet, I would point out that who is responsible is a very different question from who is at fault. One can, for instance, be responsible for a car accident which is, nevertheless an accident and due to no negligence on the part of the one responsible for it. Perhaps, a tire blew out or a piece of equipment fell off the car.

Since Deputy [REDACTED] fired his gun, there is no doubt that he is responsible for doing so. However, on the basis of all available evidence, he not only acted responsibly in doing so but went to extraordinary measures for a law enforcement officer – perhaps especially for a law enforcement officer - in order to put an end to the danger he had reason to believe he was in before he finally fired.

[REDACTED] did, indeed, have the right to carry a firearm. However, a law enforcement officer's command to put down the gun trumps the right to carry it. Even in the absence of such an order (though, nothing in the evidence is contrary to Deputy [REDACTED] account), the responsible thing to do upon seeing that a police officer is involved is to lay down the gun so there can be no question about any intent to use it. It stands to reason that an officer would be concerned for his safety and even his life for long as a citizen approached him who was completely unknown to him and had control or quick access to a firearm.

However, even though putting the gun on the ground would have been the responsible thing to do, it does not follow from this that the [REDACTED] was at fault in not doing so. In order to be fault, the intent to use the firearm would have had to actually be present and not only reasonably assumed by Deputy [REDACTED].

Deputy [REDACTED] acted reasonably and responsibly and because of this he was not at fault. Only in retrospect do we have the information that leads us to reasonably assume that the victim most probably had no ill-intent. He was a [REDACTED]-person; a property owner, a business owner, a long time husband and respected father whose only intent was most probably to secure his interests. These are only examples of the facts that Deputy [REDACTED] did not know and could not have ascertained, much less verified, in the short time it took the incident to unfold. They are also factors that lead us (but only after the incident) to the reasonable belief that the victim had no ill or malicious intent.

The eventuality that is often overlooked appears in this instance: Neither party was at fault. Rather, this will be a tragic case of reasonable conclusions based on limited knowledge and understanding of both actors and in neither case is the individual culpable for the ignorance of factors that have prevented the situation from unfolding as it did, had they been known at the time. Neither [REDACTED] nor Deputy [REDACTED] was at fault. However, because of [REDACTED] was responsible,

regardless of his intent Deputy [REDACTED] was justified in the actions he took.

ADDITIONAL OF NOTE:

Many times I've heard the complaint "How come it's right when the Police do it but illegal when I do it?" The fact is, there are things that are legal only for an officer to do, just as there are things that only a licensed physician is allowed to do.

This is especially important to remember when considering constitutional rights. We have the right to assemble, for instance. However, if law enforcement has reason to be concerned about an assembly remaining peaceable, they have the right - the responsibility, in fact - to be present to protect the rights of what might be two hostile sides to an issue. When and if the assembly becomes no longer peaceable, our right to assemble is trumped, as many rights are, by the right of society to safety and security and the responsibility of law enforcement to put safety and security over some of our individual rights.

It may be advisable to increase the Department's efforts at communicating to the public not only what law enforcement does but why they do it as they do. The rights and responsibilities of a commissioned officer are, I think, often misunderstood by the public and/or they do not appreciate the possible ramifications of them and that may have been true of [REDACTED], as well.

Here are four recommendations based on serious concerns that arose in the process of my considerations. One of them concerns the particular incident and the other is more general, even though it arose within the consideration of this particular case.

First, I note that in the first taped interview of Deputy [REDACTED] and in spite of the fact that the instructions were included with the papers in the possession of the interviewer, Deputy [REDACTED] was not fully advised of his rights, as noted in those documents. Rather, it is during the second interview that he is asked if he was aware of those rights during the first interview and he says that he was aware of them at that time.

Recommendation 32:

Whenever investigative interviews are done, proof that one is advised of his/her rights should be documented in writing whenever this is possible. In this case, it was clearly and easily possible. A written document should be prepared, read to and signed by the interviewee and entered into the written record of the interview.

Second, the photos of the back of Deputy [REDACTED] patrol car lead me to wonder how an officer can find anything in it, much less in an emergency situation. It is my understanding that each officer brings these items to the vehicle in a container when he/she begins shift.

Recommendation 33:

Containers and their contents should be standardized and officers held responsible for keeping them organized and fully outfitted, each shift. This is, at the very least, no different from the requirement to keep a standardized uniform clean and presentable. But more, it is no less important keeping track of ordinance, since a life may depend on these supplies, including the life of an

injured officer. I recommend developing a list of contents and particular placement of these contents within a standard container and checking for compliance on a regular basis.

Recommendation 34:

If this is not already being done, policies should be reviewed for possible modification according to a regular time frame. Without assessing the possible time that such a review might take, I am reticent to recommend a particular length of time. This may even be something the Department could initiate with assistance from the Citizen's Review Board, as well as wider public participation.

Recommendation 35:

With my training in Organizational Leadership, I was surprised to find that the Citizen's Review Board operated in such an effective capacity as representative of public opinion and viewpoint, together with varying personal perspectives and questions, but still reached a consensus on the incident. However, as desirable as it is to work with such a group, it must also retain its legitimacy. One of the ways I believe this should happen is through a rotation of Board members. Given a particular number of members, perhaps one fifth of them could be replaced every five years, on a staggered schedule so that the knowledge and experience of the group is maintained.

Overall, I note that this policy document was adopted from Lexipol. However, while it may serve the Department well as a template, the document needs to be assessed and modified if it will make it better. An appeal to Lexipol as author of the document is what is known as "an appeal to authority. Authority is not always correct, nor is it always best.

Finally, I would like to express my thanks to Sheriff [REDACTED] for the trust he placed in seeking outside review of policy and this particular incident. With the Citizen's Review Board in place, he has certainly exceeded his minimum responsibilities in doing so. I also wish to thank Deputy [REDACTED] for his open input, throughout. Finally, my thanks to Deputy [REDACTED] for his final review of this document, realizing that any modifications were at my sole discretion, though his suggests were usually an improvement.

Respectfully submitted,

[REDACTED]

[REDACTED]
[REDACTED], 2011

APPENDIX: Non-Exhaustive list of applicable laws

RCW 9A.16.010 – Definitions.

In this chapter, unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

RCW 9A.16.020 - Use of force -- When lawful.

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to compel the offender with reasonable regard to the offender's personal safety;

Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person.

RCW 9A.16.040 - Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.

(1) Homicide or the use of deadly force is justifiable in the following cases:

- (a) When a public officer is acting in obedience to the judgment of a competent court; or
- (b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.
- (c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:
 - (i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;
 - (ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or
 - (iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or
 - (iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

- (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

A public officer or peace officer shall not be held criminally liable for using deadly force without notice and with a good faith belief that such act is justifiable pursuant to this section.

section shall not be construed as:

- (a) Affecting the permissible use of force by a person acting under the authority of RCW

9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

Notes:

Legislative recognition: "The legislature recognizes that RCW 9A.16.040 establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the authority of RCW 9.01.200, 9A.16.020, or 9A.16.050 is not restricted and remains broader than the limitations imposed on peace officers."

RCW 9.41.098 - Forfeiture of firearms — Disposition — Confiscation.

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a non-felony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department *bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. The Washington

state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

RCW 9.41.270 - Weapons apparently capable of producing bodily harm — Unlawful carrying or handling — Penalty — Exceptions.

(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

Spokane County Sheriff's Office
In-Service Training
3rd Quarter, 2010
Patrol Procedures Training(FATS)

Assemble students at FATS training room. (No firearms or use-of-force tools allowed inside the classroom)

Review use-of-force philosophy via Powerpoint presentation: **35 Minutes**

Assemble Contact/Cover teams.

3 hours

- I Initiate a scenario with two officers standing under projector and non-participating students seated at the back of the classroom acting as observers.
- II Allow entire scenario to complete without interruption.
- III Instructor leads a debriefing by focusing on:
Officer(s) justifying their actions via current laws, dept. policy, and sound tactics (communication skills, use-of-force choice, movement, force-option presentation, transitions, etc.)
- IV Replay the scenario without interruption (non-participatory)
- V Instructor offers contingencies to participants' choice of action during the scenario (constructive learning)
- VI Finally, instructor quizzes participants of preceding scenario on other force-options available or applicable
- VII Instructor extracts input from observers
- VIII Repeat with new participants selected from the observation group
(Generally, a scenario and subsequent debriefing will last 10 – 15 minutes)

End of session

Submitted by [redacted]
[redacted]/2010

Spokane County Sheriff's Office
In-Service Training
3rd Quarter, 2010
Patrol Procedures Training(Scenario)

Assemble students at SCSO training area. (No firearms or use-of-force tools allowed inside the classroom/training arena except training Airsoft, inert O.C., etc.) Distribute safety equipment and review operations. (TWO ACTORS NEEDED) 3.5 hours

Assemble Contact/Cover teams & verify possession training aids (inert O.C. etc.)

GUIDELINES

- I Initiate a scenario with two officers (non-participating students remain removed from the scenario and act as observers).
- II Allow entire scenario to complete without interruption.
- III Instructor leads a debriefing by focusing on:
Officer(s) justifying their actions via current laws, dept. policy, and sound tactics (communication skills, use-of-force choice, movement, force-option presentation, transitions, etc.)
- IV Instructor offers contingencies to participants' choice of action during the scenario. (constructive learning)
- V Finally, instructor quizzes participants of preceding scenario on other force-options available or applicable
- VI Instructor extracts input from observers
- VII Repeat with new participants selected from the observation group
(Generally, a scenario and subsequent debriefing will last 10 – 15 minutes)

Scenario 1 – Argument (2 officer response)

Scene – Home

Equipment needed – two actors (with red knives)

Incident – Exigent entry and discovery of male strangling another person.

Info - TWO officers arrive at an argument heard at an address (anonymous). After hearing an argument inside, knocks at door go unanswered. Argument escalates to an assault heard inside.

Suspect responses/Contingencies for completing these scenarios:

1. Suspect continues strangulation without acknowledging officers and succumbs to a wound (full compliance by wounded suspect)

Goal: Officer use-of-force and follow-up

2. After officers enter, suspect initiates a choke-hold on victim & produces a secreted knife (hostage incident) ordering officers to leave. Suspect complies with effective verbal orders by officer(s)

Goal: Officer use-of-force, communication, and follow-up

3. Again, suspect initiates a choke-hold on victim & produces a knife (hostage) stimulating officer communication/negotiation.

Goal: Officer use-of-force, communication, and follow-up

- Each scenario variation complete when suspect handcuffed or effective communication lasts for approx one minute.

DEBRIEF (see above guidelines)

Scenario 2 – Coffee break (2 officer)

Scene – Coffee shop/or similar

Equipment needed – Two actors (1 Airsoft handgun for suspect)

Incident – Officers are ambushed by a lone gunman who enters.

Info - Officers enjoy a break and/or complete paperwork.

Suspect responses/Contingencies for repeating this scenario:

1. Suspect assaults officers with a firearm and succumbs to a wound by officers (full compliance by wounded suspect)

Goal: Officer use-of-force and follow-up

2. Suspect assaults officers with a firearm and immediately walks away with his back towards officers succumbing to wounds away from scene (full compliance by back-wounded suspect)

Goal: Officer use-of-force and follow-up

3. Suspect assaults officers with a firearm and initiates a choke-hold on a nearby patron [(hostage) stimulating officer communication/negotiation]. Tailor suspect response to officers' ability to communicate/act

Goal: Officer use-of-force, communication, and follow-up

- Each scenario variation complete when suspect handcuffed or effective communication lasts for approx one minute.

DEBRIEF (see above guidelines)

IA # 11-0010

Scenario 3- Shooting From Vehicle (2 parts)

Scene – Patrol Vehicle

Equipment needed – One actor, one patrol car, two airsoft pistols, writing material, safety equipment.

Incident – Officer engages deadly threats while seated in patrol vehicle.

Info – Officer responds to threat(s) while completing paperwork in patrol vehicle.

Part One:

1. Four paper targets are hung outside patrol vehicle and are numbered 1-4.
2. Instructor will call out target number(s) and officer will draw and fire at identified target(s) from seated position.
3. After each target is engaged, officer will exit vehicle, take cover after engaging threat(s), and radio for assistance.
4. Minimum of one role player will then ambush the officer with airsoft. (Instructor will set up scenario so that the officer must engage the threat before exiting the vehicle)
5. Officer will draw and engage the threat from the driver's seat of the patrol vehicle.
6. Officer will exit the vehicle, take cover/tactical position, continue to engage the threat until there is no more threat, and radio for assistance.
7. **DEBRIEF**

Scenario 4– Warrant Service (3 officer response) Optional if time allows

Scene – Home

Equipment needed –two actors (with a red knife)

Incident – Arrest of suspect.

Info - Officers attempt felony warrant service (property crime) at an address and KNOW suspect is inside. Knocks at door **initially** go unanswered.

Suspect responses/Contingencies for repeating this scenario:

1. IF IMMEDIATE ENTRY IS MADE - Suspect acknowledges officer entry (full compliance)

Goal: Officer use-of-force, communication, and follow-up

2. IF IMMEDIATE ENTRY IS MADE - Suspect produces a knife and orders officers to leave. Tailor suspect response to officers' ability to communicate/act

Goal: Officer use-of-force, communication, and follow-up

3. IF IMMEDIATE ENTRY IS MADE - Suspect initiates a chokehold on his friend (actor) & produces a knife [(hostage) stimulating officer communication/negotiation].

Goal: Officer use-of-force, communication, and follow-up

- Each scenario variation complete when suspect handcuffed or effective communication lasts for approx one minute.

DEBRIEF (see above guidelines)

End of session

*Submitted by B. Moen
4/30/2010*

SPOKANE COUNTY SHERIFF'S OFFICE



3rd Quarter In-Service
PATROL PROCEDURES TRAINING

PLAN FOR THE MORNING

- Classroom review:
 - Officer Safety
 - Contact & Cover
 - Response to Resistance
- Split into groups
 - F.A.T.S. (Force-Options Training Simulator)
 - Patrol Scenarios

*Prepared by: Deputy Brian Moen
Deputy Justin Elliott*

SAFETY

- NO firearms, less-lethal, knives, ammo, or any other weapons allowed in any of today's scenarios.
- Airsoft equipment and inert OC only.
- Facial protection will be worn during all scenarios where airsoft is a force option.

OFFICER SAFETY

- The following was obtained from the F.B.I. report on "Law Enforcement Officers Killed and Assaulted"
- Statistics from 1999-2008
- 586 officers murdered
- 561 of these murdered with firearms

CIRCUMSTANCES

- Disturbance calls = 103, (DV's = 61)
- Arrest situations = 211
- Investigating susp. persons/circs = 106
- Traffic stops = 101
- Mentally deranged = 8
- Ambush = Handling transporting = 89

DISTANCE

- 0-5 feet = 303 officers
- 6-10 feet = 121 officers
- 11-20 feet = 70 officers
- 21-50 feet = 52 officers
- over 50 feet = 49 officers

WEAPONS

- 57 officers killed with their own weapon
- 158 officers fired their own weapon .
- 113 officers had their weapon stolen
- Wound Location
 - 202 were front head shots
 - 231 were front torso shots

WEAPON TYPE

- Handgun = 480
- Rifle = 112
- Shotgun = 34
- Knife = 12
- Personal = 6
weapons

TACTICAL OVERVIEW

- Awareness
 - Familiar with equipment
 - Accuracy (Target acquisition, center mass)
 - Avenue of escape-familiar with surroundings
 - Movement
 - Cover (Generally stops bullets)
 - Concealment (Hides officer's position)
 - Distance to enhance tactical advantage (Distance equals time)
- Communicate
 - With suspect/subject
 - Fellow officers and dispatch

FORCE OPTIONS

- Uniform Presence
- Verbal
- Chemical Agents
- Hands/Control Holds
- Impact Weapons
- Electronic Weapons
- Less Lethal Force
- Lethal Force

Components to Officer Survival

- Mental
- Physical
- Mechanical

MENTAL

- Know your department policy
- Know the legal justifications
- Understand the moral issues
- Pre-set your mind to the use of good tactics
- Train the mind through hypothetical situations (*Visualization*)

PHYSICAL

- Allows you to cope with adrenaline more effectively
- Affected less by shock
- Faster recovery from injury
- Can think more clearly under stress
- Sustain longer periods of intense physical activity

MECHANICAL

- Includes all aspects of weapon manipulation
- Loading, unloading, presentation
- Speed and tactical reloads
- Malfunctions
- Use of a Flashlight
- Should be able to employ your tools rapidly and effectively

ACCURACY

- Be sure of your target and background
- You are responsible for every round fired
- You can't miss fast enough to catch up
- Hits count, misses don't
- Shoot as fast as possible, **carefully**

COLOR CODE

- Colonel Jeff Cooper
- Allows an officer to check their mental state
- A method to ensure an officer is in the right frame of mind for a given situation
- Reduces lag time

WHITE

- A normal, non-combative state
- Do not expect trouble
- Feel perfectly safe
- If attacked will be completely surprised
- In your home etc.

YELLOW

- A state of relaxed alertness
- Assumed whenever you carry a firearm
- Do not expect a specific hostile act but are aware it may happen
- Can maintain indefinitely

ORANGE

- Fight is likely
- Tactical plan in mind at state of alarm
- Reason to believe something will happen
- Total focus on the situation at hand
- Cannot maintain for long periods
- Cannot be surprised while in this state

RED

- Fight is likely
- Tactical plan in mind at state of alarm
- Reason to believe something will happen
- Total focus on the situation at hand
- Cannot maintain for long periods
- Cannot be surprised while in this state

BLACK

- Panic
- Freezing
- Inability to make a decision
- Kill zone from a mental standpoint (people die!)
- Prevented by mental preparation & "when/then" thinking

Contact/Cover Review

STAY IN YOUR ROLES!

CONTACT OFFICER

- Conducts ALL business of the encounter.
- Records suspect or incident information
- Performs pat-downs and searches of suspects and vehicles
- Issues all citations
- Handcuffs all arrestees
- Recovers evidence or contraband
- Handles routine radio communications
- May delegate duties to cover officer if Code-4

(Calbra Press Street Survival)

COVER OFFICER

- Devotes full attention to the suspect(s) through a position of surveillance and control.
- Discourages hostile acts by suspects
- Discourages escape
- Alerts Contact Officer to any attempts to hide, discard or destroy evidence
- Intervenes with force if necessary to protect Contact Officer
- Resists distraction
- Constitutes an unspoken "force presence"

(Calbra Press Street Survival)

POSITIONING

- Personal cover, if available
- Unobstructed view of Contact Officer and suspect(s)
- Safe background(s) for shooting
- Peripheral view of surrounding area
- Control of likeliest escape route(s)

PEACE OFFICER & AGENCY LIABILITY

- Title 18, USC Section 242 (criminal)
 - Peace officers are prohibited from depriving citizens of their rights under the color of the law
 - If death results, officers may be punishable by life imprisonment
- Title 42, USC Section 1983 (civil)
 - Peace officers are prohibited from depriving citizens of their rights under the color of authority

USE OF FORCE-WHEN LAWFUL RCW 9A.16.020

Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction.

ARREST AUTHORITY; FORCE PERMISSABLE-RCW 10.31.050

- Arrest under probable cause
- After announcement of intent to arrest
- Suspect flees or forcibly resists
- Officer may use all necessary means to effect the arrest
(Lexipol Policy 300.2.1)

JUSTIFIABLE HOMICIDE BY A PEACE OFFICER-RCW 9A.16.040

- In obedience to the judgment of a competent court
- When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty
- When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony and who are fleeing from justice or resisting such arrest

REASONABLE FORCE

- A peace officer may use reasonable force to arrest, prevent escape, or overcome resistance of any person he believes has committed a public offense
- A peace officer need not retreat or desist because suspect resists or threatens to resist
- Officer is not deemed an aggressor
- Officer does not lose right of self defense by using reasonable force

REASONABLE FORCE CASE LAW

- Deadly force - Tennessee v. Garner
- Reasonable force - Graham v. Conner
- More restrictive policy - Long Beach POA v. Long Beach
- Violating agency policy - Peterson v. Long Beach
- Level of Force - Forrester v. San Diego

REASONABLE FORCE Graham v. Conner

- Judged from the perspective of a reasonable officer
- Examined through the eyes of the officer on the scene *at the time the force was applied*
- Based on the facts and circumstances confronting the officer *without regard to the officer's underlying intent or motivation*
- Based on the knowledge that the officer acted properly under the established law at the time

REASONABLE FORCE Graham v. Conner

The Graham Inquiry of Reasonableness
(evaluation factors for the use of force)

- The severity of the crime at issue
- The threat of the suspect to officer(s) and citizens
- The active resistance of the suspect to arrest/escape

REASONABLE FORCE Graham v. Conner

- All determinations of unreasonable force 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

TENNESSEE v. GARNER Use of Deadly Force

- Life-threatening Felony/Crime of Violence
 - Threatens an officer with a weapon or is believed to be armed
 - Committed a crime involving the infliction or threatened infliction of serious physical harm
- Life-threatening Escape
 - Poses significant threat to officers or others if allowed to escape
- Lethal Force MAY be used
 - If reasonably necessary to prevent escape
- Where feasible, a warning should be given
 - Halt-Police! Stop or I'll shoot!

AGENCY POLICY LBPOA v. Long Beach Peterson v. Long Beach

**MUST CONFORM TO POLICY NO MATTER
WHAT STATE LAW SAYS**

- Common issues policies deal with
 - Defense of self & others against death or SBI
 - Use of warning shots
 - Shooting at
 - Non-violent fleeing felons
 - juveniles
 - moving vehicles
 - Shooting from moving vehicles

FORRESTER v. SAN DIEGO

Level of Force (9th Circ. 1994)

- Based on the Graham inquiry of reasonableness
- Not simply whether the force was necessary to accomplish a legitimate police objective
- Was the force used reasonable in light of all the relevant circumstances
- Least-intrusive/minimal v. Reasonable

AGENCY POLICY

(Lexipol § 300)

- **Generic overview of policies - each officer must be familiar with their own policy**
- **Force Options Defined**
 - Choices available to an officer concerning methods of force available as identified in each agency's policy documentation

THE END